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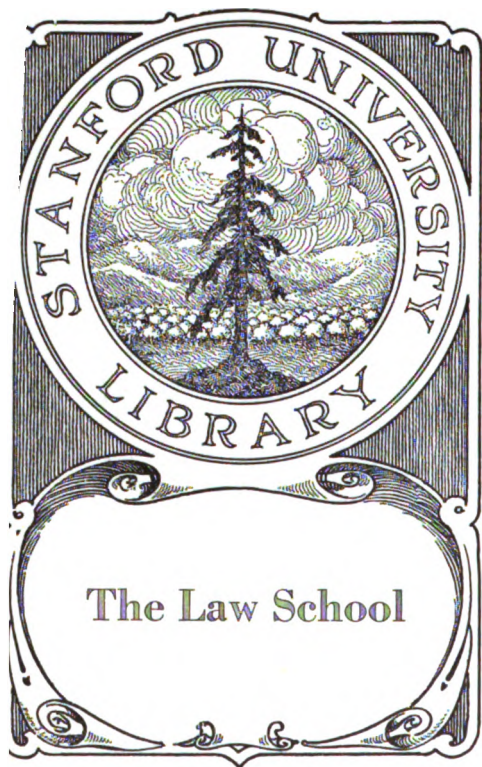
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Seaver, J.

1878.



The Manuscript

Notes 1872-3

W. P. Lawrence Jr.

CONSTITUTION ^{1878.}

AND

SCHEDULE

ADOPTED

IN CONVENTION,

AT

CHARLESTON, APRIL 9TH, 1872.



CHARLESTON:
JOHN W. GENTRY, PRINTER.
1874.

L12456

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PROCLAMATION.

BY THE GOVERNOR.

I, John J. Jacob, Governor of the State of West Virginia, do issue my proclamation, and declare that the Honorable Samuel Price, President of the Convention, which assembled at the seat of government on the third Tuesday in January last, "to consider, discuss and propose a new Constitution, or alterations and amendments to the existing Constitution of this State," has certified to me an accurate transcript of the Constitution and Schedule adopted by the said Convention, April ninth, in the year one thousand eight hundred and seventy-two, a copy of which Constitution and Schedule is hereto annexed.

In testimony whereof, I have hereunto set my hand and caused the seal of the State to be affixed at Charleston, this tenth day of April, in the year one thousand eight hundred and seventy-two, and of the State, the ninth.

JOHN J. JACOB.

By the Governor:

JOHN M. PHELPS,
Secretary of State.

CONSTITUTION
OF THE
STATE OF WEST VIRGINIA.

ARTICLE I.

RELATIONS TO THE GOVERNMENT OF THE UNITED STATES.

1. The State of West Virginia is, and shall remain, one of the United States of America. The Constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The government of the United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited to the States, are reserved to the States or to the people thereof. Among the powers so reserved by the States, is the exclusive regulation of their own internal government and police; and it is the high and solemn duty of the several departments of government, created by this Constitution, to guard and protect the people of this State, from all encroachments upon the rights so reserved.

3. The provisions of the Constitution of the United States, and of this State, are operative alike in a period of war as in time of peace, and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good government, and tends to anarchy and despotism.

4. For the election of representatives to Congress, the State shall be divided into districts, corresponding in number with the represent

atives to which it may be entitled; which districts shall be formed of contiguous counties, and be compact. Each district shall contain, as nearly as may be, an equal number of population, to be determined according to the rule prescribed in the Constitution of the United States.

ARTICLE II.

THE STATE.

1. The territory of the following counties, formerly parts of the Commonwealth of Virginia, shall constitute and form the State of West Virginia, viz:

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Counties* The counties of Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming. The State of West Virginia includes the bed, bank and shores of the Ohio river, and so much of the Big Sandy river as was formerly included in the Commonwealth of Virginia; and all territorial rights and property in, and jurisdiction over, the same, heretofore reserved by, and vested in, the Commonwealth of Virginia, are vested in, and shall hereafter be exercised by, the State of West Virginia. And such parts of the said beds, banks and shores, as lie opposite, and adjoining the several counties of this State, shall form parts of said several counties respectively.

2. The powers of government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.

3. All persons residing in this State, born, or naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of this State.

4. Every citizen shall be entitled to equal representation in the government, and, in all apportionments of representation, equality of numbers of those entitled thereto, shall as far as practicable, be preserved.

5. No distinction shall be made between resident aliens and citizens as to the acquisition, tenure, disposition, or descent of property.

6. Treason against the State, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort.

No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason shall be punished according to the character of the acts committed, by the infliction of one, or more, of the penalties, of death, imprisonment or fine, as may be prescribed by law.

7. The present seal of the State, with its motto, "*Montani Semper Liberi*," shall be the great seal of the State of West Virginia, and shall be kept by the Secretary of State, to be used by him officially, as directed by law.

8. Writs, grants and commissions, issued under the authority of this State, shall run in the name of, and official bonds shall be made payable to, the State of West Virginia. Indictments shall conclude, "Against the peace and dignity of the State."

ARTICLE III.

BILL OF RIGHTS.

1. All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: the enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety.

2. All power is vested in, and consequently derived from the people. Magistrates are their trustees and servants, and at all times amenable to them.

3. Government is instituted for the common benefit, protection and security of the people, nation or community. Of all its various forms that is the best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and when any government shall be found independent or contrary to these purposes, a majority of the community, has an indubitable, inalienable, and infeasible right to reform, alter or abolish it in such manner as shall be judged most conducive to the public weal.

4. The privilege of the writ of *habeas corpus* shall not be suspended. No person shall be held to answer for treason, felony or other crime not cognizable by a justice, unless on presentment or indictment of a grand jury. No bill of attainder, *ex post facto* law, or law impairing the obligation of a contract, shall be passed.

5. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall be transported out of, or forced to leave the State, for any offence committed within the same; nor shall any person, in any criminal case, be compelled to be a witness against himself, or be twice put in jeopardy of life or liberty for the same offence.

6. The right of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue except upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, or the person or thing to be seized.

7. No law abridging the freedom of speech, or of the press, shall be passed; but the Legislature may, by suitable penalties, restrain the publication or sale of obscene books, papers or pictures, and provide for the punishment of libel, and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel, or defamation.

8. In prosecutions, and civil suits for libel, the truth may be given in evidence; and if it shall appear to the jury, that the matter charged as libelous, is true, and was published with good motives, and for justifiable ends, the verdict shall be for the defendant.

9. Private property shall not be taken or damaged for public use, without just compensation; nor shall the same be taken by any company, incorporated for the purposes of internal improvement, until

just compensation shall have been paid, or secured to be paid, to the owner; and when private property shall be taken, or damaged, for public use, or for the use of such corporations, the compensation to the owner shall be ascertained in such manner, as may be prescribed by general law: *Provided*, that when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.

10. No person shall be deprived of life, liberty or property, without due process of law, and the judgment of his peers.

11. Political tests, requiring persons, as a pre-requisite to the enjoyment of their civil and political rights, to purge themselves by their own oaths, of past alleged offences, are repugnant to the principles of free Government, and are cruel and oppressive. No religious or political test oath shall be required as a pre-requisite or qualification to vote, serve as a juror, sue, plead, appeal, or pursue any profession or employment. Nor shall any person be deprived by law, of any right or privilege, because of any act done prior to the passage of such law.

12. Standing armies in time of peace, should be avoided, as dangerous to liberty. The military shall be subordinate to the civil power; and no citizen, unless engaged in the military service of the State, shall be tried or punished by any military court, for any offence that is cognizable by the civil courts of the State. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

13. In suits at common law, where the value in controversy, exclusive of interest and costs, exceeds twenty dollars, the right of trial by a jury of twelve men, if required by either party, shall be preserved; except that in appeals from the judgments of justices, a jury of a less number may be authorized by law; but in trials of civil cases before a justice, no jury shall be allowed. No fact tried by a jury, shall, in any case, be otherwise re-examined, than according to the rules of the common law.

14. Trials of crimes, and of misdemeanors, unless herein otherwise provided, shall be by a jury of twelve men, public, without unreasonable delay, and in the county where the alleged offence was committed, unless upon petition of the accused, and for good cause shown, it is removed to some other county. In all such trials, the accused shall be fully and plainly informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have

the assistance of counsel, and a reasonable time to prepare for his defence: and there shall be awarded to him, compulsory process for obtaining witnesses in his favor.

15. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened, in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and, by argument, to maintain their opinions in matters of religion; and the same shall, in no wise, effect, diminish, or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves, or others, any tax, for the erection or repair of any house for public worship, or for the support of any church or ministry, but it shall be left free, for every person to select his religious instructor, and to make for his support, such private contract, as he shall please.

16. The right of the people to assemble in a peaceable manner, to consult for the common good, to instruct their representatives, or to apply for redress of grievances, shall be held inviolate.

17. The courts of this State shall be open, and every person, for an injury done to him, in his person, property, or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.

18. No conviction shall work corruption of blood or forfeiture of estate.

19. No hereditary emoluments, honors or privileges, shall ever be granted or conferred in this State.

20. Free government, and the blessings of liberty, can be preserved to any people, only by a firm adherence to justice, moderation, temperance frugality and virtue, and by a frequent recurrence to fundamental principles.

ARTICLE IV.

ELECTION AND OFFICERS.

1. The male citizens of the State, shall be entitled to vote at all

elections held within the counties, in which they respectively reside; but no person who is a minor; or of unsound mind, or a pauper, or who is under conviction of treason, felony, or bribery in an election, or who has not been a resident of the State for one year, and of the county in which he offers to vote, for sixty days next preceeding such offer, shall be permitted to vote, while such disability continues; but no person in the military, naval, or marine service of the United States, shall be deemed a resident of this State by reason of being stationed therein.

2. In all elections by the people, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed or secret ballot as he may elect.

3. No voter, during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to, and returning from the same, shall be subject to arrest upon civil process, or, be compelled to attend any court, or judicial proceeding, as suitor, juror or witness; or to work upon the public roads, or, except in time of war or public danger, to render military service.

4. No person, except citizens entitled to vote, shall be elected or appointed to any State, county, or municipal office; but the Governor and Judges, must have attained the age of thirty, and the Attorney-General and Senators, the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the State, for five years next preceeding their election, or appointment, or be citizens at the time this Constitution goes into operation.

5. Every person elected, or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall make oath, or affirmation, that he will support the Constitution of the United States and the Constitution of this State, and that he will faithfully discharge the duties of his said office, to the best of his skill and judgment; and no other oath, declaration, or test, shall be required as a qualification, unless herein otherwise provided.

6. All officers elected or appointed under this Constitution, may, unless in cases herein otherwise provided for, be removed from office, for official misconduct, incompetence, neglect of duty, or gross immorality, in such manner as may be prescribed by general laws, and unless so removed, they shall continue to discharge the duties of their respective offices, until their successors are elected, or appointed and qualified.

7. The general elections of State and county officers, and of members of the Legislature, shall be held on the second Tuesday of October, until otherwise provided by law. The terms of such officers, not elected or appointed to fill a vacancy, shall unless herein otherwise provided, begin on the first day of January, and of the members of the Legislature, on the first day of November, next succeeding their election. Elections to fill vacancies shall be for the unexpired term. When vacancies occur prior to any general election, they shall be filled by appointments in such manner as may be prescribed herein, or by general law, which appointments shall expire at such time after the next general election, as the person so elected to fill such vacancy shall be qualified.

8. The Legislature, in cases not provided for in this Constitution, shall prescribe by general laws, the terms of office, powers, duties and compensation of all public officers and agents, and the manner in which they shall be elected, appointed, and removed.

9. Any officer of the State, may be impeached for mal-administration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the sole power of impeachment. The Senate shall have the sole power to try impeachments, and no person shall be convicted without the concurrence of two-thirds of the members elected thereto. When sitting of a court of impeachment, the President of the Supreme Court of Appeals, or, if from any cause, it be improper for him to act, then any other judge of that court, to be designated by it, shall preside; and the Senators shall be on oath, or affirmation, to do justice according to law and evidence. Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit, under the State; but the party convicted shall be liable to indictment, trial, judgment, and punishment, according to law. The Senate may sit during the recess of the Legislature, for the trial of impeachment.

10. Any citizen of this State, who shall, after the adoption of this Constitution, either in, or out of the State, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in such duel, shall, ever hereafter, be incapable of holding any office of honor, trust, or profit in this State.

11. The Legislature shall prescribe the manner of conducting, and making returns of elections, and of determining contested elections;

and shall pass such law, as may be necessary and proper to prevent intimidation, disorder, or violence at the polls, and corruption or fraud in voting, counting the vote, ascertaining or declaring the result, or fraud, in any manner, upon the ballot.

12. No citizens shall ever be denied, or refused the right or privilege of voting at an election, because his name is not, or has not been registered, or listed, as a qualified voter.

ARTICLE V.

DIVISION OF POWERS.

1. The Legislative, Executive,, and Judicial Departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that Justices of the Peace shall be eligible to the Legislature.

ARTICLE VI.

LEGISLATURE.

1. The legislative power shall be vested in a Senate and House of Delegates. The style of their acts shall be, "Be it enacted by the Legislature of West Virginia."

2. The Senate shall be composed of twenty-four, and the House of Delegates, of sixty-five members, subject to be increased according to the provisions hereinafter contained.

3. Senators shall be elected for the term of four years, and Delegates, for the term of two years. The Senators first elected, shall divide themselves into two classes, one Senator from every district being assigned to each class; and of these classes, the first, to be designated by lot in such manner as the Senate may determine, shall hold their seats for two years; and the second, for four years, so that after the first election, one-half of the Senators, shall be elected bi-ennially.

4. For the election of Senators, the State shall be divided into twelve Senatorial Districts, which number shall not be diminished, but may be increased as hereinafter provided. Every district shall

elect two Senators, but, where the district is composed of more than one county, both shall not be chosen from the same county. The districts shall be compact, formed of contiguous territory, bounded by county lines, and, as nearly as practicable, equal in population, to be ascertained by the census of the United States. After every such census, the Legislature shall alter the Senatorial Districts, so far as may be necessary to make them conform to the foregoing provision.

5. Until the Senatorial Districts shall be altered by the Legislature as herein prescribed, the counties of Hancock, Brooke and Ohio, shall constitute the first Senatorial District; Marshall, Wetzel and Marion, the second; Ritchie, Doddridge, Harrison, Gilmer and Calhoun, the third; Tyler, Pleasants, Wood and Wirt, the fourth; Jackson, Mason, Putnam and Roane, the fifth; Kanawha, Clay, Nicholas, Braxton and Webster, the sixth; Cabell, Wayne, Lincoln, Boone, Logan, Wyoming, McDowell and Mercer, the seventh; Monroe, Greenbrier, Summers, Pocahontas, Fayette and Raleigh, the eighth; Lewis, Randolph, Upshur, Barbour, Taylor and Tucker, the ninth; Preston and Monongalia, the tenth; Hampshire, Mineral, Hardy, Grant and Pendleton, the eleventh; Berkeley, Morgan and Jefferson, the twelfth.

6. For the election of Delegates, every county containing a population of less than three-fifths of the ratio of representation for the House of Delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a Delegate District.

7. After every census the Delegates shall be apportioned as follows: The ratio of representation for the House of Delegates, shall be ascertained by dividing the whole population of the State, by the number of which the House is to consist, and rejecting the fraction of a unit, if any, resulting from such division. Dividing the population of every Delegate District, and of every county not included in a Delegate District, by the ratio thus ascertained, there shall be assigned to each, a number of Delegates equal to the quotient obtained by this division, excluding the fractional remainder. The additional Delegates necessary to make up the number of which the House is to consist, shall then be assigned to those Delegate Districts, and counties not included in a Delegate District, which would otherwise, have the largest fractions unrepresented; but every Delegate District, and county not included in a Delegate District, shall be entitled to at least one delegate.

8. Until a new apportionment shall be declared, the counties of Pleasants and Wood shall form the first Delegate District, and elect

three Delegates; Ritchie and Calhoun, the second, and elect two Delegates; Barbour, Harrison and Taylor, the third, and elect one Delegate; Randolph and Tucker, the fourth, and elect one Delegate; Nicholas, Clay and Webster, the fifth, and elect one Delegate; McDowell and Wyoming, the sixth, and elect one Delegate.

9. Until a new apportionment shall be declared, the apportionment of Delegates to the counties not included in Delegate Districts, and to Barbour, Harrison and Taylor counties, embraced in such Districts, shall be as follows :

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hampshire, Hancock, Jackson, Lewis, Logan, Greenbrier, Monroe, Mercer, Mineral, Morgan, Grant, Hardy, Lincoln, Pendleton, Putnam, Roane, Gilmer, Taylor, Tyler, Upshur, Wayne, Wetzel, Wirt, Pocahontas, Summers and Raleigh counties, one Delegate each.

To Berkeley, Harrison, Jefferson, Marion, Marshall, Mason, Monongalia and Preston counties, two Delegates each.

To Kanawha county, three Delegates.

To Ohio county, four delegates.

10. The arrangement of the Senatorial and Delegate Districts, and apportionment of Delegates, shall hereafter be declared by law, as soon as possible after each succeeding census, taken by authority of the United States. When so declared, they shall apply to the first general election for members of the Legislature, to be thereafter held, shall continue in force unchanged, until such Districts shall be altered, and Delegates apportioned, under the succeeding census.

11. Additional territory may be admitted into, and become part of this State, with the consent of the Legislature and a majority of the qualified voters of the State, voting on the question. And in such case, provision shall be made by law, for the representation thereof in the Senate and House of Delegates, in conformity with the principles set forth in this Constitution. And the number of members of which each House of the Legislature is to consist, shall thereafter be increased, by the representation assigned to such additional territory.

12. No person shall be a Senator or Delegate, who has not for one year next preceeding his election, been a resident within the District or county from which he is elected; and if a Senator or Delegate remove from the District, or county, for which he was elected, his seat shall be thereby vacated.

13. No person holding a lucrative office under this State, the United States, or any foreign government ; no member of Congress ; no person who is a salaried officer of any railroad company, or who is sheriff, constable, or clerk of any court of record, shall be eligible to a seat in the Legislature.

14. No person who has been, or hereafter shall be, convicted of bribery, perjury, or other infamous crime, shall be eligible to a seat in the Legislature. No person who may have collected, or been entrusted with public money, whether State, county, township, district, or other municipal organization, shall be eligible to the Legislature, or to any office of honor, trust, or profit in this State, until he shall have duly accounted for and paid over such money according to law.

15. No Senator or Delegate, during the term for which he shall have been elected, shall be elected or appointed to any civil office of profit under this State, which has been created, or the emoluments of which have been increased during such term, except offices to be filled by election by the people. Nor shall any member of the Legislature be interested, directly or indirectly, in any contract, with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

16. Members of the Legislature, before they enter upon their duties, shall take and subscribe the following oath, or affirmation ; "I do solemnly swear (or affirm,) that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and faithfully discharge the duties of Senator (or Delegate,) according to the best of my ability;" and they shall also take this further oath, to-wit: "I will not accept or receive directly or indirectly, any money or other valuable thing, from any corporation, company, or person, for any vote or influence I may give or withhold, as Senator (or Delegate,) on any bill, resolution or appropriation, or for any act I may do or perform as Senator (or Delegate)." These oaths shall be administered in the Hall of the House to which the member is elected, by a Judge of the Supreme Court of Appeals, or of a Circuit Court, or by any other person authorized by law to administer an oath; and the Secretary of State shall record and file said oaths subscribed by each member; and no other oath or declaration shall be required as a qualification. Any member who shall refuse to take the oath herein prescribed, shall forfeit his seat; and any member, who shall be convicted of having violated the oath last above required to be taken, shall forfeit his seat, and be disqualified thereafter from holding any office of profit or trust in this State.

17. Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same; and for words spoken in debate, or any report, motion or proposition, made in either House, a member shall not be questioned in any other place.

18. The Legislature shall assemble at the seat of Government biennially, and not oftener, unless convened by the Governor. The first session of the Legislature, after the adoption of this Constitution, shall commence on the third Tuesday of November, 1872; and the regular biennial session of the Legislature shall commence on the second Wednesday of January, 1875, and every two years thereafter, on the same day.

19. The Governor may convene the Legislature by proclamation whenever, in his opinion, the public safety or welfare shall require it. It shall be his duty to convene it, on application in writing, of three-fifths of the members elected to each House.

20. The Seat of Government shall be at Charleston, until otherwise provided by law.

21. The Governor may convene the Legislature at another place, when, in his opinion, it cannot safely assemble at the Seat of Government; and the Legislature may, when in session, adjourn to some other place, when in its opinion, the public safety or welfare, or the safety of the members, or their health shall require it.

22. No session of the Legislature, after the first, shall continue longer than forty-five days, without the concurrence of two-thirds of the members elected to each House.

23. Neither House shall, during the session, adjourn for more than three days, without the consent of the other. Nor shall either, without such consent, adjourn to any other place than that in which the Legislature is sitting.

24. A majority of the members, elected to each House of the Legislature, shall constitute a quorum. But a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, as each House may provide. Each House shall determine the rules of its proceedings, and be the judge of the elections, returns and qualifications, of its own members. The Senate shall choose, from its own body, a President; and the House of Delegates, from its own body, a Speaker. Each House shall appoint its own officers, and remove them at pleasure. The oldest Delegate present, shall call the House to order, at the opening of each new House of Dele-

gates, and preside over it, until the Speaker thereof shall have been chosen, and have taken his seat. The oldest member of the Senate present at the commencement of each regular session thereof, shall call the Senate to order, and preside over the same until a President of the Senate shall have been chosen, and have taken his seat.

25. Each House may punish its own members for disorderly behavior, and with the concurrence of two-thirds of the members elected thereto, expel a member, but not twice for the same offence.

26. Each House shall have power to provide for its own safety, and the undisturbed transaction of its business, and may punish by imprisonment, any person not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threat or abuse of a member; for words spoken in debate. But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offence, by the ordinary course of law.

27. Laws shall be enacted and enforced, by suitable provisions and penalties, requiring sheriffs, and all other officers, whether State, county, district or municipal, who shall collect or receive, or whose official duty it is, or shall be, to collect, receive, hold, or pay out any money belonging to, or which is, or shall be, for the use of the State or of any county, district, or municipal corporation, to make annual account and settlement therefor. Such settlement, when made, shall be subject to exceptions, and take such direction, and have only such force and effect, as may be provided by law; but in all cases, such settlement shall be recorded, and be open to the examination of the people at such convenient place or places as may be appointed by law.

28. Bills and resolutions may originate in either House, but may be passed, amended or rejected by the other.

29. No bill shall become a law, until it has been fully and distinctly read, on three different days in each House, unless, in case of urgency, by a vote of four-fifths of the members present, taken by yeas and nays on each bill, this rule be dispensed with: *Provided*, in all cases, that an engrossed bill shall be fully and distinctly read in each House.

30. No act hereafter passed, shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act, which is not so expressed, the act shall be void only as to so much thereof, as shall not be so expressed, and no law shall be revived, or amended, by reference to its title only; but the law revived, or the section amended, shall be inserted at large, in the new

act. And no act of the Legislature, except such as may be passed at the first session under this Constitution, shall take effect, until the expiration of ninety days after its passage, unless the Legislature shall, by a vote of two-thirds of the members elected to each House, taken by yeas and nays, otherwise direct.

31. When a bill, or joint resolution, passed by one House, shall be amended by the other, the question on agreeing to the bill, or joint resolution, as amended, shall be again voted on, by yeas and nays, in the House by which it was originally passed, and the result entered upon its journals; in all such cases, the affirmative vote of a majority of all the members elected to such House shall be necessary.

32. Whenever the words, "a majority of the members elected to either House of the Legislature," or words of like import, are used in this Constitution, they shall be construed to mean a majority of the whole number of members to which each House is, at the time, entitled, under the apportionment of representation, established by the provisions of this Constitution.

33. The members of the Legislature shall each receive for their services, the sum of four dollars per day, and ten cents for each mile traveled in going to, and returning from, the Seat of Government, by the most direct route. The Speaker of the House of Delegates, and the President of the Senate, shall each receive an additional compensation of two dollars per day for each day they shall act as presiding officers. No other allowance or emolument than that by this section provided, shall directly or indirectly be made or paid to the members of either House, for postage, stationery, newspapers, or any other purpose whatever.

34. The Legislature shall provide by law, that the fuel, stationery and printing paper, furnished for the use of the State; the copying, printing, binding and distributing the laws and journals; and all other printing ordered by the Legislature, shall be let by contract to the lowest responsible bidder, bidding under a maximum price to be fixed by the Legislature; and no member or officer thereof, or officer of the State, shall be interested, directly or indirectly, in such contract, but all such contracts shall be subject to the approval of the Governor, and in case of his disapproval of any such contract, there shall be a re-letting of the same in such manner as may be prescribed by law.

35. The State of West Virginia shall never be made defendant in any court of law or equity.

36. The Legislature shall have no power to authorize lotteries, or gift enterprises, for any purpose, and shall pass laws to prohibit the sale of lottery, or gift enterprise tickets in this State.

37. No law shall be passed after the election of any public officer, which shall operate to extend the term of his office.

38. No extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract made; nor shall any Legislature authorize the payment of any claim or part thereof, hereafter created against the State, under any agreement or contract made, without express authority of law; and all such unauthorized agreement shall be null and void. Nor shall the salary of any public officer be increased, or diminished, during his term of office, nor shall any such officer, or his or their sureties, be released from any debt or liability due to the State: *Provided*, The Legislature may make appropriations for expenditures hereafter incurred, in suppressing insurrection, or, repelling invasion.

39. The Legislature shall not pass local or special laws, in any of the following enumerated cases; that is to say, for

Granting divorces ;

Laying out, opening, altering and working roads or highways ;

Vacating roads, town plats, streets, alleys and public grounds ;

Locating, or changing county seats ;

Regulating or changing county or district affairs ;

Providing for the sale of church property, or property held for charitable uses ;

Regulating the practice in courts of justice ;

Incorporating cities, towns, or villages, or amending the charter of any city, town or village, containing a population of less than two thousand ;

Summoning, or impanneling grand or petit juries ;

The opening, or conducting of any election, or designating the place of voting ;

The sale, or mortgage of real estate, belonging to minors, or others under disability ;

Chartering, licensing, or establishing, ferries, or toll bridges ;

Remitting fines, penalties, or forfeitures ;

Changing the law of descent ;

Regulating the rate of interest ;

Authorizing deeds to be made for land sold for taxes ;

Releasing taxes ;

Releasing title to forfeited lands ;

The Legislature shall provide, by general laws, for the foregoing and all other cases for which provision can be so made ; and in no case shall a special act be passed, where a general law would be proper, and can be made applicable to the case, nor in any other case in which the courts have jurisdiction, and are competent to give the relief asked for.

40. The Legislature shall not confer upon any court, or judge, the power of appointment to office, further than the same is herein provided for.

41. Each House shall keep a journal of its proceedings, and cause the same to be published from time to time, and all bills and joint resolutions, shall be described therein, as well by their title as their number, and the yeas and nays on any question, if called for by one-tenth of those present, shall be entered on the journal.

42. Bill making appropriations for the pay of members, and officers of the Legislature, and for salaries for the officers of the Government, shall contain no provision on any other subject.

43. The Legislature shall never authorize or establish any board, or court of registration of voters.

44. In all elections to office which may hereafter take place in the Legislature, or in any county, or municipal body, the vote shall be *viva voce*, and be entered on its journals.

45. It shall be the duty of the Legislature, at its first session after the adoption of this Constitution, to provide, by law, for the punishment by imprisonment in the penitentiary, of any person who shall bribe, or attempt to bribe, any executive or judicial officer of this State, or any member of the Legislature in order to influence him, in the performance of any of his official or public duties ; and, also, to provide by law, for the punishment by imprisonment in the penitentiary, of any of said officers, or any member of the Legislature, who shall demand, or receive, from any corporation, company, or person, any money, testimonial, or other valuable thing, for the performance of his official or public duties, or for refusing, or failing to perform the same, or for any vote or influence, a member of the Legislature, may give or withhold as such member ; and, also, to provide by

law, for compelling any person, so bribing or attempting to bribe, or so demanding, or receiving, a bribe, fee, reward, or testimonial, to testify against any person or persons, who may have committed any of said offences: *Provided*, that any person so compelled to testify, shall be exempted from trial and punishment for the offence of which, he may have been guilty, and concerning which he is compelled to testify; and any person convicted of any of the offences specified in this section, shall, as a part of the punishment thereof, be forever disqualified from holding any office, or position of honor, trust, or profit in this State.

46. Laws may be passed regulating or prohibiting the sale of intoxicating liquors within the limits of this State.

47. No charter of incorporation shall be granted to any church, or religious denomination. Provision may be made by general laws for securing the title to church property, and for the sale and transfer thereof, so that it shall be held, used, or transferred for the purposes of such church, or religious denomination.

48. Any husband or parent, residing in this State, or the infant children of deceased parents, may hold a homestead of the value of one thousand dollars, and personal property to the value of two hundred dollars, exempt from forced sale subject to such regulations as shall be prescribed by law: *Provided*, that such homestead exemption shall in nowise affect debts or liabilities existing at the time of the adoption of this Constitution: *and provided further*, that no property shall be exempt from sale for taxes due thereon, or for the payment of purchase money due upon said property, or for debts contracted for the erection of improvements thereon.

49. The Legislature shall pass such laws as may be necessary to protect the property of married women from the debts, liabilities, and control of their husbands.

50. The Legislature may provide for submitting to a vote of the people at the general election to be held in 1876, or at any general election thereafter, a plan or scheme of proportional representation in the Senate of this State; and if a majority of the votes cast at such election be in favor of the plan submitted to them, the Legislature shall at its session succeeding said election, re-arrange the Senatorial Districts in accordance with the plan so approved by the people.

ARTICLE VII.

EXECUTIVE DEPARTMENT.

1. The Executive Department shall consist of a Governor, Secretary of State, State Superintendent of Free Schools, Auditor, Treasurer, and Attorney-General, who shall be, *ex officio*, Reporters of the Court of Appeals. Their terms of office, respectively, shall be four years, and shall commence on the fourth day of March, next after their election. They shall, except the Attorney-General, reside at the Seat of Government during their terms of office, and keep there the public records, books and papers, pertaining to their respective offices, and shall perform such duties as may be prescribed by law.

ELECTION.

2. An election for Governor, State Superintendent of Free Schools, Auditor, Treasurer, and Attorney-General, shall be held at such times and places as may be prescribed in this Constitution, or by general law.

3. The returns of every election for the above named officers, shall be sealed up and transmitted by the returning officers, to the Secretary of State, directed "to the Speaker of the House of Delegates," who shall, immediately after the organization of the House and before proceeding to business, open and publish the same, in the presence of a majority of each House of the Legislature, which shall, for that purpose, assemble in the Hall of the House of Delegates. The person having the highest number of votes for either of said offices, shall be declared duly elected thereto; but if two or more have an equal and the highest number of votes for the same office, the Legislature shall, by joint vote, choose one of such persons for said office. Contested elections for the office of Governor, shall be determined by both Houses of the Legislature, by joint vote, in such manner as may be prescribed by law. The Secretary of State shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue in office, unless sooner removed, until the expiration of the official term of the Governor by whom he shall have been appointed.

ELIGIBILITY.

4. Neither the Governor, State Superintendent of Free Schools, Auditor, Treasurer, nor Attorney-General, shall hold any other office, during the term of his service. The Governor shall be ineligible to

said office, for the four years, next succeeding the term for which he was elected.

5. The chief executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed.

6. The Governor shall, at the commencement of each session, give to the Legislature information by message, of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall accompany his message with a statement of all money received and paid out by him, from any funds, subject to his order, with vouchers therefor; and, at the commencement of each regular session, present estimates of the amount of money required by taxation for all purposes.

7. The Governor may, on extraordinary occasions, convene, at his own instance, the Legislature; but when so convened, it shall enter upon no business, except that stated in the proclamation by which it was called together.

8. The Governor shall nominate, and by and with the advice and consent of the Senate, (a majority of all the Senators elected concurring by yeas and nays,) appoint all officers whose offices are established by this Constitution, or shall be created by law, and whose appointment or election is not otherwise provided for; and no such officers shall be appointed or elected by the Legislature.

9. In case of a vacancy, during the recess of the Senate, in any office which is not elective, the Governor shall by appointment, fill such vacancy, until the next meeting of the Senate, when he shall make a nomination for such office, and the person so nominated, when confirmed by the Senate, (a majority of all the Senators elected concurring by yeas and nays,) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the Senate, shall be again nominated for the same office, during the same session, unless at the request of the Senate; nor shall such person be appointed to the same office during the recess of the Senate.

10. The Governor shall have power to remove any officer whom he may appoint, in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his office vacant, and fill the same, as herein provided in other cases of vacancy.

11. The Governor shall have power to remit fines and penalties, in such cases, and under such regulations, as may be prescribed by law; to commute capital punishment, and, except where the prosecution

has been carried on by the House of Delegates, to grant reprieves, and pardons, after conviction; but he shall communicate to the Legislature, at each session, the particulars of every case of fine or penalty remitted, of punishment commuted, and of reprieve or pardon granted, with his reasons therefor.

12. The Governor shall be commander-in-chief of the military forces of the State, (except when they shall be called into the service of the United States) and may call out the same, to execute the laws, suppress insurrection, and repel invasion.

13. When any State officer has executed his official bond, the Governor shall, for such causes, and in such manner as the Legislature may direct, require of such officer reasonable additional security; and if the security is not given as required, his office shall be declared vacant, in such manner as may be provided by law.

14. Every bill passed by the Legislature shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if not, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, a majority of the members elected to that House, agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall, likewise, be reconsidered, and if approved by a majority of the members elected to that House, it shall become a law, notwithstanding the objections of the Governor. But in all such cases, the vote of each House shall be determined by yeas and nays, to be entered on the Journal. Any bill, which shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, shall be a law, in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case, it shall be filed, with his objections, in the office of the Secretary of State, within five days after such adjournment, or become a law.

15. Every bill passed by the Legislature, making appropriations of money, embracing distinct items, shall, before it becomes a law, be presented to the Governor; if he disapprove the bill, or any item or appropriation therein contained, he shall communicate such disapproval, with his reasons therefor, to the House in which the bill originated: but all items not disapproved shall have the force and effect of law, according to the original provisions of the bill. Any item, or items, so disapproved shall be void, unless re-passed by a majority of

each House, according to the rules and limitations prescribed in the preceding section in reference to other bills.

16. In case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the Governor, the President of the Senate shall act as Governor, until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases, where there is no one to act as Governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of Governor, before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy.

17. If the office of Auditor, Treasurer, State Superintendent of Free Schools, or Attorney-General, shall become vacant by death, resignation, or otherwise, it shall be the duty of the Governor to fill the same by appointment, and the appointee shall hold his office, until his successor shall be elected and qualified, in such manner as may be provided by law.

The subordinate officers of the Executive Department, and the officers of all public institutions of the State, shall keep an account of all moneys received or disbursed by them respectively, from all sources, and for every service performed, and make a semi-annual report thereof to the Governor, under oath or affirmation; and any officer who shall wilfully make a false report, shall be deemed guilty of perjury.

18. The subordinate officers of the Executive Department, and the officers of all the public institutions of the State, shall, at least ten days preceding each regular session of the Legislature, severally report to the Governor, who shall transmit such report to the Legislature; and the Governor may at any time require information in writing, under oath, from the officers of his department, and all officers and managers of State institutions, upon any subject relating to the condition, management, and expenses, of their respective offices.

19. The Governor shall receive for his services a salary of twenty-seven hundred dollars per annum, and no additional emolument, allowance, or perquisite, shall be paid or made to him, on any account. Any person, acting as Governor, shall receive the emoluments of that office. The Secretary of State shall receive one thousand; the State Superintendent of Free Schools, fifteen hundred; the Treasurer, fourteen hundred; the Auditor, two thousand; and the Attorney-

General, thirteen hundred dollars per annum; and no additional emolument or allowance, except as herein otherwise provided, shall be paid or made out of the treasury of the State to any of the foregoing executive officers, on any account.

ARTICLE VIII.

JUDICIARY DEPARTMENT.

1. The Judicial power shall be vested in a supreme Court of Appeals, and in Circuit Courts, and the Judges thereof; in county and Corporation Courts, and in Justices of the Peace.

SUPREME COURT OF APPEALS.

2. The Supreme Court of Appeals shall consist of four Judges, any three of whom shall be a quorum. They shall be elected by the voters of the State, and shall hold their office for the term of twelve years, unless sooner removed in the manner prescribed by this Constitution; except, that of those first elected, two, to be designated by lot in such manner as they may determine, and in the presence of the Governor, shall hold their offices for four years; a third, to be designated in like manner, for eight years, and the fourth, for twelve years; so that one or more shall be elected every four years.

3. It shall have original jurisdiction in cases of *habeas corpus*, *mandamus*, and *prohibition*. It shall have appellate jurisdiction in civil cases, where the matter in controversy, exclusive of costs, is of greater value, or amount than one hundred dollars; in controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee, or curator; or concerning a mill, road, way, ferry, or landing; or the right of a corporation, or county to levy tolls, or taxes; and, also, in cases of *quo warranto*, *habeas corpus*, *mandamus* and *prohibition*, and in cases involving freedom, or the constitutionality of a law. It shall have appellate jurisdiction, in criminal cases, where there has been a conviction for felony, or misdemeanor, in a Circuit Court, and where a conviction has been had in any inferior court, and been affirmed in a Circuit Court.

4. No decision rendered by the Supreme Court of Appeals, shall be considered as binding authority upon any of the inferior courts of this State, except in the particular case decided, unless such decision is concurred in, by at least three judges of said court.

5. When a judgment, or decree is reversed, or affirmed, by the Supreme Court of Appeals, every point fairly arising upon the record of the case, shall be considered, and decided; and the reasons therefor shall be concisely stated in writing, and preserved with the record of the case; and it shall be the duty of the Court to prepare a syllabus of the points adjudicated in each case concurred in by three of the judges thereof, which shall be prefixed to the published report of the case.

6. A writ of error, supersedeas, or appeal shall be allowed only by the supreme Court of appeals, or a Judge thereof, or by a Judge of a Circuit Court, upon a petition assigning error in the judgment, or proceedings of the inferior court, and then only after the said Court or Judge shall have examined, and considered the record and assignment of errors, and is satisfied, that there is error in the same, or that it presents a point, proper for the consideration of the Court of Appeals.

7. If a vacancy shall occur in said Court, from any cause, the Governor shall issue a writ of election, to fill such vacancy for the residue of the term: *Provided*, That if the unexpired term, be less, than two years, the Governor, shall appoint a Judge to fill such vacancy.

8. The officers of the Supreme Court of Appeals, except the Reporter, shall be appointed by the Court, or, in vacation, by the Judges thereof, with the power of removal; their duties and compensation shall be prescribed by law.

9. There shall be at least two terms of the Court of Appeals held annually. at such times and places, as may be prescribed by law.

CIRCUIT COURTS.

10. The State shall be divided into nine circuits; for each circuit a Judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by this Constitution.

During his continuance in office, he shall reside in the circuit of which he is Judge.

11. A Circuit Court shall be held in every county, twice a year. But provision may be made by law for special terms; and a judge of any circuit may hold the court, in another circuit.

12. The Circuit Courts shall have the supervision of all proceedings before the County Courts, and other inferior tribunals, by *mandamus*, *prohibition*, or *certiorari*. They shall, except in cases confided by this Constitution exclusively to some other tribunal, have original, and general jurisdiction of all matters at law, where the amount in controversy, exclusive of interest, exceeds fifty dollars: in cases of *quo warranto*, *habeas corpus*, *mandamus*, or *prohibition*; and in all cases of equity, and of all felonies, and misdemeanors. They shall have appellate jurisdiction, upon petition and assignment of error, in all cases of judgments, decrees, and final orders, rendered by the County Court, and such other inferior courts of record as may be hereafter established by law under the provisions of this article, where the matter in controversy, exclusive of costs, is of greater value or amount, than twenty dollars; in controversies respecting the title, or boundaries of land; the probate of wills, the appointment, or qualification of a personal representative, guardian, committee, or curator; or concerning a mill, road way, ferry, or landing, or the right of a corporation, or county to levy tolls, or taxes; and also in cases of *habeas corpus*, *quo warranto*, *mandamus*, *prohibition*, and *certiorari*, and in cases involving freedom, or the constitutionality of a law; and in all cases of conviction under criminal prosecutions in said court. It shall have such other original jurisdiction, as may be prescribed by law.

*Circuit Ct.
Jurisdiction*

13. The Legislature may authorize by general law, any indictment for a misdemeanor found by the grand jury of any Circuit Court, to be certified by said court to the County Court of the county, in which the indictment shall be found, for further proceedings to be had thereon, in such manner, and under such regulations, as may be prescribed by law.

14. The State shall be arranged into the following circuits:—The counties of Hancock, Brooke, Ohio and Marshall, shall constitute the first circuit; the counties of Wetzel, Marion, Monongalia, Taylor, Doddridge and Harrison, the second; the counties of Jefferson, Berkeley and Morgan, the third; the counties of Hampshire, Mineral, Grant, Hardy and Pendleton, the fourth; the counties of Tyler, Pleasants, Ritchie, Wood, Wirt and Calhoun, the fifth; the counties of Randolph, Tucker, Barbour, Lewis, Webster, Gilmer, Preston and Upshur, the sixth; the counties of Jackson, Roane, Putnam, Kanawha and Mason, the seventh; the counties of Greenbrier, Monroe, Fayette, Summers, Clay Nicholas, Pocahontas and Braxton, the eighth; and the counties of Cabell, Wayne, Lincoln, Boone, Logan, Wyoming, Mercer, Raleigh and McDowell, the ninth.

15. The Legislature may, after the expiration of five years from the time this Constitution goes into operation, re-arrange the circuits, but the number of circuits shall not then be increased; and no re-arrangement of the circuits shall have the effect of removing a Judge from office. After the census of 1880, it may increase the number of circuits, so as not to exceed one circuit, for every fifty-five thousand inhabitants of the State.

16. The Legislature shall provide by law for holding Circuit Courts where, from any cause, the Judge shall fail to attend, or if in attendance, cannot properly preside.

GENERAL PROVISIONS.

17. All Judges shall be commissioned by the Governor. The salary of the Judges of the Court of Appeals shall be twenty-two hundred and fifty dollars per annum, and that of Judges of the Circuit Court shall be two thousand dollars; and each shall receive the same allowance for necessary travel, as members of the Legislature. No Judge, during his term of office, shall, practice the profession of law, or hold any other office, appointment, or public trust, under this, or any other government, and the acceptance thereof shall vacate his judicial office; nor shall he, during his continuance therein, be eligible to any political office.

18. Judges may be removed from office by a concurrent vote of both Houses of the Legislature, where from age, disease, or mental or bodily infirmity, they are incapable of discharging the duties of their offices. But two-thirds of the members elected to each House, must concur in such vote; and the cause of removal shall be entered upon the journal of each House. The Judge, against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied with the cause alleged for his removal, at least twenty days before the day on which either House of the Legislature shall act thereupon.

19. The voters of each county shall elect a Clerk of the Circuit Court, whose term of office shall be six years; his duties and compensation, and the mode of removing him from office, shall be prescribed by law; and when a vacancy shall occur in the office, the Judge of the Circuit Court shall appoint a clerk, who shall discharge the duties of the office, until the vacancy shall be filled by election. In any case in respect to which the clerk shall be so situated as to make it improper for him to act, the Court shall appoint a substitute.

20. The Clerks of the Circuit Courts, and the Clerk of the Supreme Court of Appeals, shall, under such regulations as may be prescribed

by law, make an annual report to the Auditor, exhibiting the number of suits commenced, pending, and decided in their respective Courts, and the number of days the Courts were in session during the year, which shall be condensed by said Auditor, and made a part of his annual report to the Legislature.

21. Wherever the Legislature is expressly prohibited by this Constitution from doing any particular act, and the same shall be done, in violation of such prohibition, it shall be the duty of the Courts, upon a proper case presented before them, to declare such act null and void.

22. The Legislature may establish courts of limited jurisdiction within any incorporated town or city, subject to such appeal as now is, or may hereafter be, prescribed by law.

COUNTY COURTS.

23. There shall be in each county of the State, a County Court, which shall be composed of a President and two Justices of the Peace, except when, by this Constitution, the presence of a greater number is required. It shall hold six sessions during the year, at times to be prescribed by law; two of which shall be limited to matters connected with the police and fiscal affairs of the county; the other four shall be held for the trial of causes, and for the transaction of all other business within the general jurisdiction of the Court, except an assessment or levy upon the property of the county. In all cases where a levy of the county is laid, a majority of all the Justices elected in the county, shall be necessary to constitute a quorum for the transaction of that business.

24. The President of the Court shall be elected by the voters of the county, and shall hold his office for the term of four years. It shall be his duty to attend each term of the said Court, and he shall receive for such service, four dollars for every day he presides in Court, to be paid from the county treasury. He shall also perform such other duties, and receive such compensation therefor, as may be prescribed by law; except, that he shall not be authorized to try causes out of Court. When from any cause he is unable to attend as President of the Court, any Justice may be added to make the Court, who, in conjunction with the other two, may designate one of their own number to preside in his absence.

25. Each county shall be laid off into districts, not less in number than three, nor more than ten, as nearly equal as may be in territory

and population. In each district there shall be elected by the voters thereof, one, and not more than two, Justices of the Peace, who shall reside in their respective districts, and hold their office for the term of four years.

The present sub-divisions of the counties by townships, shall constitute such districts until changed by a court constituted of a majority of the Justices of the county.

26. The Justices of the Peace shall be classified by law, for the performance of their duties in Court; they shall receive a compensation of three dollars per day, for their services in Court, to be paid out of the county treasury, and they may receive fees for other official duties, to be prescribed by law, and paid by the parties, for whom the service shall be rendered.

27. The County Court shall have original jurisdiction, in all actions at law, where the amount in controversy exceeds twenty dollars; and also in all cases of *habeas corpus*, *quo warranto*, *mandamus*, *prohibition*, *certiorari*, and in all suits in equity. It shall have jurisdiction in all matters of probate; the appointment and qualification of personal representatives, guardians, committees, and curators, and the settlement of their accounts, and in all matter relating to apprentices; and of all criminal cases under the grade of felony, except as hereinbefore provided. But the jurisdiction of the County Court shall be subject to such limitations as may be prescribed by law. They shall have the custody, through their clerks, of all wills, deeds, and other papers presented for probate, or record in said county, which shall be disposed of, or preserved, as required by law.

28. It shall also have the superintendence and administration of the internal police and fiscal affairs of the county, including the establishment and regulation of roads, ways, bridges, public landings, ferries, and mills, with authority to lay, and disburse the county levies: *Provided*, that no license shall be granted in any city, town, or village without the consent of the authorities of the same first had and obtained. It shall, in all contested cases, judge of the election, qualification and returns of its own members, and of all county and district officers; and it shall exercise such other jurisdiction, and perform such other duties, as may be prescribed by law. Nothing in this article shall impair, or affect the charter of any municipal corporation.

29. The County Court shall have jurisdiction of all appeals from the judgment of the Justices, and their decision upon such appeal shall be final in all cases, except such as involve the title, right of pos-

session, or boundaries of lands, the freedom of a person, the validity of a law, or an ordinance of any corporation, or the right of a corporation to levy tolls, or taxes.

No Judge, or Justice shall sit in an appellate court, in review of a decision made by him.

30. The voters of each county shall elect a Clerk of the County Court, whose term of office shall be six years, and whose duties, compensation and mode of removal shall be prescribed by law.

31. Provision may be made under such regulations as may be prescribed by law, for the probate of wills, and for the appointment and qualification of personal representatives, guardians, committees and curators, during the recess of the regular sessions of the County Court.

32. A vacancy in the office of the President of the Court shall be filled until the next regular election, by the Justices, all of whom shall be summoned for that purpose. Vacancies in the office of Justice of the Peace may be filled, until the next regular election, by the County Court.

33. The civil jurisdiction of a Justice of the Peace, shall extend to actions of assumpsit, debt, detinue, and trover, if the amount claimed, exclusive of interest, does not exceed one hundred dollars; but where the amount claimed, shall exceed twenty dollars, on the application of the defendant, either in person or by counsel, made at any time before trial, it shall be the duty of the Justice of the Peace to transmit the papers in the case to the Clerk of the County Court, to be therein tried. The jurisdiction of Justices of the Peace shall extend throughout their county; they shall be conservators of the peace, and have such jurisdiction and powers in criminal cases as may be prescribed by law. And Justices of the Peace shall have authority to take the acknowledgment of deeds, and other writings, administer oaths, and take and certify depositions. And the Legislature may give to Justices, such additional civil jurisdiction and powers within their respective counties, as may be deemed expedient, under such regulations and restrictions, as may be prescribed by general law; except that in suits to recover money, or damages, their jurisdiction and powers shall, in no case, exceed one hundred dollars.

Jurisdiction of Justices

43. The Legislature shall upon the application of any county, reform, modify, or alter the County Court established by this Constitution, in such county, and in lieu thereof, with the assent of a majority of the voters of said county, voting at any election held for that purpose, create another Court, or other tribunals, as well for judicial as

for police and fiscal purposes, either separate, or combined, which shall conform to the wishes of the county making the application, but with the same powers and jurisdiction herein conferred upon the County Court, and with compensation to be made from the county treasury.

If two or more adjoining counties shall prefer to unite in the election of a Judge to hold a County Court, in their respective counties, they shall, with the assent of a majority of the voters of each of said counties be authorized, for all the purposes of judicial organization, to do so in the manner, and upon the terms above set forth: *Provided*, that the courts so created shall, in their provisions, be made to conform to the policy of the State, as prescribed in this Constitution.

35. No citizen of this State who aided, or participated in the late war between the Government of the United States and a part of the people thereof, on either side, shall be liable in any proceeding civil or criminal; nor shall his property be seized or sold under final process, issued upon judgments, or decrees heretofore rendered, or otherwise, because of any act done according to the usages of civilized warfare, in the prosecution of said war, by either of the parties thereto.

The Legislature shall provide, by general law, for giving full force and effect to this section, by due process of law.

36. Such parts of the common law, and of the laws of this State, as are in force when this Constitution goes into operation, and are not repugnant thereto, shall be, and continue, the law of the State until altered or repealed by the Legislature. All civil and criminal suits and proceedings pending in the former Circuit Courts of this State, shall remain, and be proceeded in before the Circuit Court of the proper County.

ARTICLE IX.

COUNTY ORGANIZATION.

1. The voters of each county shall elect a Surveyor of Lands, a Prosecuting Attorney, a Sheriff, and one, and not more than two Assessors, who shall hold their respective offices for the term of four years.

2. There shall also be elected in each district of the county, by the voters thereof, one constable, and if the population of any district shall exceed twelve hundred, an additional Constable, whose term of office shall be four years, and whose powers as such shall extend throughout their county. The Assessor shall, with the advice and consent of the County Court, have the power to appoint one or more assistants. Coroners, overseers of the poor, and surveyors of roads, shall be appointed by the County Court. The foregoing officers, except the Prosecuting Attorneys, shall reside in the county and district for which they shall be respectively elected.

3. The same person shall not be elected Sheriff for two consecutive full terms; nor shall any person who acted as his deputy be elected successor to such Sheriff, nor shall any Sheriff act as deputy of his successor; nor shall he, during his term of service, or within one year thereafter, be eligible to any other office. The retiring Sheriff shall finish all business remaining in his hands, at the expiration of his term: for which purpose his commission and official bond shall remain in force. The duties of the office of Sheriff shall be preformed by him, in person, or under his superintendence.

4. The Presidents of the County Courts, the Justices of the Peace, Sheriffs, Prosecuting Attorneys, Clerks of the Circuit, and of the County Courts, and all other county officers, shall be subject to indictment for malfeasance, misfeasance, or neglect of official duty, and upon conviction thereof, their offices shall become vacant.

5. The Legislature shall provide for commissioning such of the officers herein mentioned as it may deem proper, not provided for in this Constitution, and may require any class of them to give bond with security, for the faithful discharge of the duties of their respective offices.

6. It shall further provide for the compensation, the duties and responsibilities of such officers, and may provide for the appointment of their deputies and assistants by general laws.

7. The President of the County Court, and every Justice and Constable shall be a conservator of the peace throughout his county.

8. No new county shall hereafter be formed in this State, with an area of less than four hundred square miles; nor with a population of less than six thousand; nor shall any county, from which a new county, or part thereof shall be taken, be reduced in area below four hundred square miles, nor in population, below six thousand. Nor

shall any new county be formed without the consent of a majority of the voters residing within the boundaries of the proposed new county, and voting on the question.

ARTICLE X.

TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes; all cemeteries and public property, may, by law, be exempted from taxation. The Legislature shall have power to tax, by uniform and equal laws, all privileges and franchises of persons and corporations.

2. The Legislature shall levy an annual capitation tax of one dollar upon each male inhabitant of the State, who has attained the age of twenty-one years, which shall be annually appropriated to the support of free schools. Persons afflicted with bodily infirmity may be exempted from this tax.

3. No money shall be drawn from the treasury but in pursuance of an appropriation made, by law, and on a warrant issued thereon by the Auditor; nor shall any money, or fund, be taken for any other purpose than that for which it has been, or may be, appropriated, or provided. A complete and detailed statement of the receipts and expenditures of the public moneys, shall be published annually.

4. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war; but the payment of any liability, other than that for the ordinary expenses of the State, shall be equally distributed over a period of at least twenty years.

5. The power of taxation of the Legislature shall extend to provisions for the payment of the State debt, and interest thereon, the support of Free Schools, and the payment of the annual estimated

expenses of the State; but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient, with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year.

6. The credit of the State shall not be granted to, or in aid of any county, city, township, corporation, or person; nor shall the State ever assume, or become responsible for the debts, or liabilities, of any county, city, town, township, corporation, or person; nor shall the State ever hereafter become a joint owner, or stockholder in any company, or association, in this State or elsewhere, formed for any purpose whatever.

7. County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars valuation, except for the support of Free Schools; payment of indebtedness existing at the time of the adoption of this Constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three-fifths of all the votes cast for and against it.

8. No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years: *Provided*, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

9. The Legislature may, by law, authorize the corporate authorities of cities, towns, and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same.

ARTICLE XI.

CORPORATIONS.

1. The Legislature shall provide for the organization of all corporations hereafter to be created, by general laws, uniform as to the class to which they relate; but no corporation shall be created by special law: *Provided*, that nothing in this section contained, shall prevent the Legislature from providing by special laws for the connection, by canal, of the waters of the Chesapeake with the Ohio river, by line of the James river, Greenbrier, New river and Great Kanawha.

2. stockholders of all corporations, and joint stock companies, except banks and banking institutions, created by laws of this State, shall be liable for the indebtedness of such corporations to the amount of their stock subscribed and unpaid, and no more.

3. All existing charters, or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within two years from the time this Constitution takes effect, shall thereafter have no validity or effect whatever: *Provided*, That nothing herein shall prevent the execution of any *bona fide* contract heretofore lawfully made in relation to any existing charter or grant in this State.

4. The Legislature shall provide by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person, or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

5. No law shall be passed by the Legislature, granting the right to construct and operate a street railroad within any city, town, or incorporated village, without requiring the consent of the local authorities having the control of the street or highway, proposed to be occupied by such street railroad.

BANKS.

6. The Legislature may provide, by a general banking law, for the creation and organization of banks of issue or circulation, but the stockholders of any bank hereafter authorized by laws of this State, whether of issue, deposit, or discount, shall be personally liable to the creditors thereof, over and above the amount of stock held by

them respectively, to an amount equal to their respective shares so held, for all its liabilities accruing while they are such stock-holders.

RAILROADS.

7. Every railroad corporation, organized or doing business in this State, shall annually, by their proper officers, make a report under oath, to the Auditor of Public Accounts of this State, or some officer to be designated by law, setting forth the condition of their affairs, the operations of the year, and such other matters relating to their respective railroads as may be prescribed by law. The Legislature shall pass laws, enforcing by suitable penalties, the provisions of this section.

8. The rolling stock, and all other moveable property, belonging to any railroad company or corporation in this State, shall be considered personal property, and shall be liable to execution and sale, in the same manner as the personal property of individuals; and the Legislature shall pass no law, exempting any such property from execution and sale.

9. Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as shall be prescribed by law; and the Legislature shall, from time to time, pass laws, applicable to all railroad corporations in the State, establishing reasonable maximum rates of charges for the transportation of passengers and freights, and providing for the correction of abuses, the prevention of unjust discriminations between through and local or way freight and passenger tariffs, and for the protection of the just rights of the public, and shall enforce such laws, by adequate penalties.

10. The Legislature shall, in the law regulating railway companies, require railroads running through, or within a half mile of a town, or village, containing three hundred or more inhabitants, to establish stations for the accommodation of trade and travel of said town, or village.

11. No railroad corporation shall consolidate its stock, property or franchise, with any other railroad, owning a parallel or competing line, or obtain the possession, or control of such parallel or competing line by lease or other contract, without the permission of the Legislature.

12. The exercise of the power and the right of eminent domain, shall never be so construed, or abridged, as to prevent the taking, by the Legislature, of the property and franchises of incorporated companies, already organized, and subjecting them to the public use, the same, as of individuals.

ARTICLE XII.

EDUCATION.

1. The Legislature shall provide, by general law, for a thorough and efficient system of free schools.

2. The State Superintendent of Free Schools, shall have a general supervisson of free schools, and perform such other duties in relation thereto as may be prescribed by law. If in the performance of any such duty imposed upon him by the Legislature, he shall incur any expenses, he shall be re-imbursed therefor: *Provided*, the amount does not exceed five hundred dollars in any one year.

3. The Legislature may provide for County Superintendents, and such other officers as may be necessary to carry out the objects of this Article, and define their duties, powers and compensation.

4. The existing permanent and invested school fund, and all money accruing to this State from forfeited, delinquent, waste and unappropriated lands; and from lands heretofore sold for taxes and purchased by the State of Virginia, if hereafter redeemed, or sold to others than this State; all grants, devises, or bequests that may be made to this State for the purposes of education, or where the purposes of such grants, devises, or bequests are not specified, this State's just share of the literary fund of Virginia, whether paid over or otherwise liquidated; and any sums of money, stocks, or property, which this State shall have the right to claim from the State of Virginia for educational purposes; the proceeds of the estates of persons who may die without leaving a will or heir, and of all escheated lands; the proceeds of any taxes that may be levied on the revenues of any corporation; all moneys that may be paid as an equivalent for exemption from military duty; and such sums as may, from time to time, be appropriated by the Legislature for the purpose, shall be set apart as a separate fund. to be called the "School Fund," and invested under such regulations as may be prescribed by law, in the interest bearing securities of the United States, or of this State, or if such interest bearing securities cannot be obtained, then said "School Fund" shall be invested in such other solvent interest bearing securities as shall be approved by the Governor, Superintendent of Free Schools, Auditor and Treasurer, who are hereby constituted the "Board of the School Fund." to manage the same, under such regulations as may be prescribed by law; and the interest thereof shall be annually applied to the support of free schools throughout the State, and to no other purpose whatever. But any portion of said interest remaining unexpended at the close of a fiscal year, shall be added to, and remain a

part of, the capital of the "School Fund : " *Provided*, That all taxes which shall be received by the State upon delinquent lands, except the taxes due to the State thereon, shall be refunded to the county, or district by or for which the same were levied.

5. The legislature shall provide for the support of Free Schools, by appropriating thereto the interest of the invested " School Fund," the net proceeds of all forfeitures and fines accruing to this State under the laws thereof; the State capitation tax; and by general taxation on persons and property or otherwise. It shall also provide for raising, in each county or district, by the authority of the people thereof, such a proportion of the amount required for the support of Free Schools therein as shall be prescribed by general laws.

6. The school districts into which any county is now divided, shall continue until changed in pursuance of law.

7. All levies that may be laid by any county or district for the purpose of Free Schools, shall be reported to the Clerk of the County Court, and shall, under such regulations as may be prescribed by law, be collected by the Sheriff, or other collector, who shall make annual settlement with the County Court; which settlements shall be made a matter of record by the Clerk thereof, in a book to be kept for that purpose.

8. White and colored persons shall not be taught in the same school.

9. No person connected with the free school system of the State, or with any educational institution of any name, or grade under State control, shall be interested in the sale, proceeds or profits of any book or other thing used, or to be used therein, under such penalties as may be prescribed by law: *Provided*, that nothing herein shall be construed to apply to any work written, or thing invented, by such person.

10. No independent free school district, or organization shall hereafter be created, except with the consent of the school district or districts out of which the same is to be created, expressed by a majority of the voters voting on the question.

11. No appropriation shall hereafter be made to any State Normal School, or branch thereof, except to those already established, and in operation, or now chartered.

12. The Legislature shall foster and encourage moral, intellectual, scientific and agricultural improvement; it shall, whenever it may be practicable, make suitable provision for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the State may demand.

ARTICLE XIII.

LAND TITLES.

1. All private rights and interests in lands in this State derived from or under the laws of the State of Virginia, and from or under the Constitution and laws of this State prior to the time this Constitution goes into operation, shall remain valid and secure, and shall be determined by the laws in force in Virginia, prior to the formation of this State, and by the Constitution and laws in force in this State, prior to the time this Constitution goes into effect.

2. No entry by warrant on land in this State shall hereafter be made.

3. All title to lands in this State, heretofore forfeited, or treated as forfeited, waste and unappropriated, or escheated to the State of Virginia, or this State, or purchased by either of said States at sales made for the non-payment of taxes and become irredeemable, or hereafter forfeited or treated as forfeited or escheated to this State, or purchased by it and become irredeemable, not redeemed, released or otherwise disposed of, vested and remaining in this State, shall be, and is hereby transferred to and vested in any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees,) for so much thereof as such person has, or shall have had actual continuous possession of, under color or claim of title for ten years, and who, or those under whom he claims, shall have paid the State taxes thereon, for any five years during such possession; or if there be no such person, then to any person (other than those for whose default the same may have been forfeited, or returned delinquent, their heirs or devisees,) for so much of said land as such person shall have title or claim to, regularly derived, mediately or immediately from, or under a grant from the Commonwealth of Virginia, or this State, not forfeited, which but for the title forfeited would be valid, and who, or those under whom he claims, has, or shall have paid all State taxes charged or chargeable thereon for five successive years, after the year 1865, or from the date of the grant, if it shall have issued since that year; or if there be no such person as aforesaid, then to any person, (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees,) for so much of said land as such person shall have had claim to and actual continuous possession of, under color of title for any

five successive years after the year 1865, and have paid all State taxes charged or chargeable thereon for said period.

4. All lands in this State, waste and unappropriated, or heretofore or hereafter for any cause forfeited, or treated as forfeited, or escheated to the State of Virginia, or this State, or purchased by either and become irredeemable, not redeemed, released, transferred or otherwise disposed of, the title whereto shall remain in this State till such sale as is hereinafter mentioned be made, shall by proceedings in the Circuit Court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder.

5. The former owner of any such land, shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which, if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this State, with interest at the rate of twelve per centum per annum, and the costs of the proceedings, if his claim be filed in the Circuit Court that decrees the sale, within two years thereafter.

6. It shall be the duty of every owner of land to have it entered on the land books of the county in which it, or a part of it is situated, and to cause himself to be charged with the taxes thereon, and pay the same. When for any five successive years after the year 1869, the owner of any tract of land containing one thousand acres or more, shall not have been charged on such books with State tax on said land, then by operation hereof, the land shall be forfeited and the title thereto vest in the State. But if, for any one or more of such five years, the owner shall have been charged with State tax on any part of the land, such part thereof shall not be forfeited for such cause. And any owner of land so forfeited, or of any interest therein at the time of the forfeiture thereof, who shall then be an infant, married woman, or insane person, may, until the expiration of three years after the removal of such disability, have the land, or such interest charged on such books, with all State and other taxes that shall be, and but for the forfeiture would be, chargeable on the land, or interest therein for the year 1863, and every year thereafter with interest at the rate of ten per centum per annum; and pay all taxes and interest thereon for all such years, and thereby redeem the land, or interest therein: *Provided*, such right to redeem, shall in no case extend beyond twenty years from the time such land was forfeited.

ARTICLE XIV.

AMENDMENTS.

1. No Convention shall be called, having the authority to alter the Constitution of the State, unless it be in pursuance of a law, passed by the affirmative vote of a majority of the members elected to each House of the Legislature and providing that polls shall be opened throughout the State, on the same day therein specified, which shall not be less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a Convention. And such Convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall the members be elected to such Convention, until, at least, one month after the result of the vote shall be duly ascertained, declared and published. And all acts and ordinances of the said Convention, shall be submitted to the voters of the State, for ratification or rejection, and shall have no validity whatever until they are ratified.

2. Any amendment to the Constitution of the State may be proposed in either House of the Legislature; and if the same, being read on three several days in each House, be agreed to on its third reading, by two-thirds of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and it shall be the duty of the Legislature to provide by law, for submitting the same, to the voters of the State, for ratification or rejection at the next general election thereafter, and cause the same to be published, at least three months before such election in some newspaper in every county in which a newspaper is printed. And if a majority of the qualified voters, voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the Constitution of the State. If two or more amendments be submitted at the same time, the vote on the ratification or rejection shall be taken on each separately.

SCHEDULE.

1. It shall be the duty of the President of this Convention, immediately after its adjournment, to certify to the Governor of the State of West Virginia, an accurate transcript of the Constitution and Schedule adopted by the Convention.

2. Upon the receipt of such certified transcript, the Governor shall make proclamation of that fact, and shall annex to his proclamation a copy of this Constitution and Schedule, all of which shall be published, for the general information of the people, in such manner as he shall deem most expedient.

3. The officers authorized by existing laws to conduct general elections, shall cause elections to be held at the several places of voting, established by law in each county, on the fourth Thursday of August, 1872, at which election the votes of all persons qualified to vote under the existing Constitution, and offering to vote, shall be taken upon the question of ratifying or rejecting this Constitution and Schedule. Such votes shall be by ballot. The person voting for the ratification of the Constitution and Schedule, shall have written or printed upon his ballot, the words "FOR RATIFICATION;" and the person voting against ratification shall have written or printed upon his ballot, the words "FOR REJECTION."

4. The said election shall be conducted in all things according to the provisions of the Code of West Virginia, and the amendments thereto governing elections, except as herein otherwise provided.

5. The Supervisors of each county shall assemble on the fifth day (Sunday excepted) after the said election, and proceed to ascertain the result of the same in the manner prescribed by the sixty-second section of the third chapter of the Code of West Virginia; and it shall be their duty to certify the result, without delay, to the Governor, stating in their certificates the number of votes given in their respective counties for ratification of the Constitution and Schedule, and the number given for rejection.

6. It shall be the duty of the Governor, upon receiving the said certificates, or a sufficient number thereof to enable him to ascertain the general result, to declare by proclamation the aggregate vote in the State for and against the ratification of the Constitution and Schedule; and if it shall appear from the said proclamation that a majority of votes cast are in favor of their ratification, this Constitution and Schedule shall be operative and in full force from and including the fourth Thursday of August, 1872.

7. On the same day, and under the superintendence of the officers who shall conduct the election for determining the ratification or rejection of the Constitution and Schedule, elections shall be held at the several places of voting in each county, for Senators and members of the House of Delegates, and all officers, executive, judicial, county or district, required by this Constitution to be elected by the people. Such elections shall be by ballot, and the results thereof shall be ascertained, determined and certified according to the provisions and requirements of existing laws; except that the returns of the elections of Governor, State Superintendent of Free Schools, Auditor, Treasurer, and Attorney General, shall be transmitted to the Secretary of State, sealed and addressed to the "Speaker of the House of Delegates."

8. In elections of county officers, required to be elected by districts, the existing sub-divisions by townships in each county, shall constitute such districts, until others shall be established.

9. Each county shall elect one assessor for each assessment district as now established by law; but at the election to be held under the provisions of this Schedule, in counties entitled to two Assessors, both shall be elected by the voters of the entire county.

10. At the election to be held under this Schedule, there shall also be elected in each district constituted as hereinbefore stated, as many Justices and Constables as are now authorized by law.

11. If this Constitution shall be ratified by the people, the Legisla-

ture elected under the Schedule, shall assemble at the seat of Government, on the third Tuesday in November, 1872; and the election of members of the Legislature, under this Constitution, shall vacate the seats of those elected under the present Constitution. The term of service of the Delegates first elected to the Legislature under this Constitution, shall expire on the first day of November, 1874; and the term of service of the Senators shall expire as follows: The term of first class, on the first day of November, 1874, and the term of the second class, on the first day of November, 1876.

12. The terms of office of the Governor, the State Superintendent of Free Schools, the Auditor, Treasurer, and Attorney-General, elected under this Schedule, shall commence on the fourth day of March, 1873. The Governor, the State Superintendent of Free Schools, the Auditor, Treasurer, Attorney-General, and Secretary of State, and their successors elected under the existing Constitution and laws, shall continue in office until their successors, elected or appointed under this Constitution and Schedule, shall be qualified. The terms of office of the Judges of the Supreme Court of Appeals, of the Judges of the Circuit Courts, and of all county and district officers, whose election is provided for by this Schedule, shall commence on the 1st day of January, 1873; and the present Judges of the Supreme Court of Appeals, and of the Circuit Courts, and their successors who may be appointed under the present Constitution and laws, shall remain in office until the date last aforesaid. The Recorders and Supervisors of the several counties shall continue in office, and exercise their functions under the existing Constitution and laws, until the 1st day of January, 1873. And all officers named in this section, elected under the provisions of the existing Constitution and laws, shall, until their terms expire as herein provided, receive such compensation as said Constitution and laws prescribe.

13. The Municipal Court of Wheeling shall continue in existence, and exercise its present jurisdiction until otherwise provided by law.

14. All the books, records, papers, seals and other property now in the custody and under the control of the Boards of Supervisors and Recorders of the several counties, and records, books, papers, seals and other property of the former County Courts, now in the custody of the Clerks of the Circuit Courts, shall be transferred on the first day of January, 1873, or as soon thereafter as may be, to the Clerks of the County Courts in their respective counties, and remain in their custody until otherwise prescribed by law.

15. Justices, Assessors and all other county officers, except Sheriffs

and Constables, shall, on the first day of January, 1873, or as soon thereafter as may be, transfer to their successors in office, all official books, records, papers, and property in their possession; and in cases where, from the abolition of any office, or from any other cause, a doubt shall arise as to the officer entitled to receive them, they shall be delivered to the Clerk of the County Court for preservation, until disposition be made of them by that Court.

16. All county, township, district and other officers connected with the existing system of free schools shall continue to perform the duties of their respective offices, as now prescribed by law, until their successors shall have been elected and qualified as the Legislature may provide.

17. The records, books, papers, seals and other property, and appurtenances of the existing Supreme Court of Appeals, shall, on the first day of January, 1873, or as soon thereafter as may be, be transferred to, and remain in, the care and custody of the Supreme Court of Appeals established by this Constitution, until otherwise provided by law; and all civil or criminal causes, petitions, and other proceedings, then pending in the Supreme Court of Appeals, shall be proceeded with in the Supreme Court of Appeals established by this Constitution, to final judgment. The records, books, papers, seals, and other property and appurtenances of the existing circuit courts, in this State, shall then also be transferred to, and remain in the care and custody of the circuit courts established by this Constitution, until otherwise provided by law; to which courts all process outstanding, at the time this Constitution shall go into effect, shall be returned, and by which all new process, proper in cases either pending or determined in existing circuit courts, may be issued. And all indictments, prosecutions, suits, pleas, petitions, and other proceedings pending in the present circuit court of any county, shall be prosecuted in the circuit court established in that county by this Constitution, to final judgment and execution; except, that all pending appeals from justices may be transferred to the county court organized in such county.

18. Copies and transcripts of the records and proceedings of the present Circuit Courts, shall be made and certified by the Circuit Courts established by this Constitution, or the proper officers thereof, and shall have the same force and effect as if they had been heretofore properly made and certified by the existing courts, or their proper officers.

19. Recognizances, bonds, obligations, and all undertakings entered

into, or executed before the adoption of this Constitution to the Commonwealth of Virginia, the State of West Virginia, or to any public officer, corporation, township, or county, shall remain binding and valid; and all rights and liabilities growing out of them, shall be unimpaired.

20. The Executive Department of the government shall remain as at present organized, and the Governor shall continue in office until a Governor elected under this Constitution shall be qualified; and all other persons in office when this Constitution is adopted, except as herein otherwise expressly directed, shall continue in office until their successors are qualified; and vacancies in office, happening before such qualification, shall be filled in the manner now prescribed by law.

21. All the Courts of Justice now existing shall continue with their present jurisdiction, and be held as now prescribed by law, until the judicial system established by this Constitution shall go into effect, and all rights, prosecutions, actions claims and contracts, shall remain, and continue, as if this Constitution had not been adopted, except so far as the same may be affected by the terms and provisions of this Constitution, when it shall go into effect.

22. The Legislature shall pass all laws necessary to carry this Constitution into full operation and effect.

23. At the time of the submission of this Constitution to a vote of the people, there shall be submitted as a separate proposition, the following:

"Any white citizen entitled to vote, and no other, may be elected or appointed to any office; but the Governor and Judges must have attained the age of thirty, and the Attorney General and Senators, the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the State, for five years next preceding their election, or appointment, or citizens at the time this Constitution goes into operation."

And the mode of voting on the said proposition shall be by ballot, on which shall be written or printed the word "white;" and if a majority of all the votes cast for ratification and rejection of the Constitution, be in favor of the said proposition, it shall take the place of section fourth, of Article fourth, of this Constitution. The result of the said election, shall be certified and ascertained in the same man-

ner, and by the same officers, as hereinbefore provided in regard to the election for the ratification or rejection of this Constitution. And if the result be in favor of the said proposition, the Governor shall make proclamation of the effect thereof, as hereinbefore provided.

The foregoing is a true copy of the Constitution and Schedule passed at Charleston, this 9th day of April, A. D. 1872.

SAM'L PRICE,
President of Convention.

ACTS
OF THE
LEGISLATURE

OF
WEST VIRGINIA,



AT ITS
ELEVENTH SESSION, 1872-3.



CHARLESTON:
HENRY S. WALKER, PUBLIC PRINTER.

1873.

ACTS OF 1872-3.

CHAPTER I.

AN ACT to regulate juries in such courts of limited jurisdiction as have been, or may be, established in incorporated towns and cities, and to regulate appeals from said courts.

Approved December 19, 1872.

Be it enacted by the Legislature of West Virginia:

1. That juries for every court of limited jurisdiction which has been or may be established, in any incorporated town or city, shall consist of twelve persons, resident within the jurisdiction, and having the qualifications required for jurors in the circuit courts, to be summoned and impannelled under such rules, regulations and orders as the judge of the said court of limited jurisdiction shall make or prescribe, and to be paid the same compensation as jurors in the circuit courts; such payments to be made by the parties as the court may order.

Courts of limited jurisdiction; their juries.

Qualification of.

How summoned and impannelled.

Compensation; how paid.

2. The appellate jurisdiction to the court of appeals from every court of limited jurisdiction which has been or shall be established, shall be directly to the circuit court of the county wherein such appeal is taken, or to the court of appeals, as the case may be. If the amount in controversy is less than one hundred dollars, exclusive of interest, the appeal shall be to the circuit court of the county wherein the appeal is taken. If it exceed that sum, said appeal may be taken to said circuit court, or to the court of ap-

Appellate jurisdiction.

Appeals to the
supreme court
of appeals.

peals, as the petitioner may desire. All such appeals to the supreme court of appeals shall be subject to the same limitations, exceptions, regulations and conditions as appeals from the circuit courts, or writs of error thereto.

Acts repealed.

3. All acts and parts of acts creating courts of limited jurisdiction inconsistent with the provisions of this act, are hereby repealed.

Commencement

4. This act shall be in force from and after its passage.

CHAPTER II.

AN ACT extending the time in which to take depositions in the contest for the office of Judge of the Second Judicial Circuit.

Approved December 19, 1872.

Be it enacted by the Legislature of West Virginia :

Contested election.

1. That the further time of fourteen days be allowed in which to take depositions in the contested election case, pending for the office of judge of the second judicial circuit of this state in addition to the forty days, as prescribed by section eleven of chapter six of the code of West Virginia.

Time for taking
depositions ex-
tended.

CHAPTER III.

AN ACT relating to the commencement and duration of the terms of office of the county and district officers elected on the twenty-second day of August, 1872.

Approved December 19, 1872.

Be it enacted by the Legislature of West Virginia :

County and district
officers.

1. That the terms of office of all the county and district officers elected on the twenty-second day of

August, 1872, shall commence on the first day of January, 1873, and continue until their successors are elected and qualified.

Terms of office ;
when to expire.

CHAPTER IV.

AN ACT to provide for commissioning the judges of the supreme court of appeals, and to regulate the time and manner of determining, by lot, the respective terms of office of said judges.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia :

1. That the governor, as soon as he shall ascertain who are elected judges of the supreme court of appeals, shall commission them as such and forward to them their respective commissions, who shall respectively hold their said office for such term as may be designated by lot, in such manner as they may determine, in the presence of the governor ; for which purpose he shall attend in the hall of the court room of the supreme court of appeals, at twelve o'clock, meridian, on the tenth day after the commencement of the first term of the said court hereafter to be held, or as soon thereafter as may be ; the proceedings to be held in open court and to be entered upon its records, a copy of which to be filed in the executive department to be entered on its journal.

Judges of supreme
court of appeals.

How commissioned

Terms of office.

How, when and
where determined.

Proceedings to be
recorded, and where
filed.

2. This act shall commence and be in force from and after its passage.

CHAPTER V.

AN ACT concerning cases transferred from the supreme court of appeals and district courts of Virginia, to the supreme court of appeals of West Virginia.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia :

1. That further time, until the close of the second term of the supreme court of appeals in this state, to

Further time given
to docket cases.

be held in the year 1873, be given to the appellants or plaintiffs in error, in cases pending in the supreme court of appeals of Virginia, and the district courts thereof, on the nineteenth day of June, 1863, and which were transferred to the supreme court of appeals of West Virginia, by an act entitled "An act defining the jurisdiction and power of the supreme court of appeals and the judges thereof," passed July twentieth, eighteen hundred and sixty-three, to procure and deliver to the clerk of the supreme court of appeals of this state proper copies of the record in said courts, or of such substitute for such records as now is or may be hereafter provided for by law, and to cause them to be docketed in said court last mentioned; and the provisions of this act shall extend to all cases hereinbefore mentioned, notwithstanding such cases may have been dismissed because of the expiration of the time given under former laws to file such records; and the cases so dismissed being docketed on compliance with the terms of this act, shall be proceeded in as though no such dismissal had taken place.

CHAPTER VI.

AN ACT repealing chapter thirty-seven of the code of West Virginia, regulating the place in which suits may be brought against public officers and certain corporations.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia:

Chapter repealed.

1. That chapter thirty-seven of the code of West Virginia, concerning the recovery of claims against the state and officers representing the state, be and the same is hereby repealed.

Commencement

2. This act shall be in force from and after the passage thereof.

CHAPTER VII.

AN ACT providing for the qualification of judges.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia :

1. That judges of the supreme court of appeals ^{Judges, qualification of.} and circuit judges shall, before entering upon the duties of their office, take, before some person within this state qualified to administer oaths, an oath to support the constitution of the United States, and to support the constitution of the state of West Virginia, and an oath to faithfully discharge the duties of their office; such qualification shall be valid and have the same force and effect as if said oaths had been taken within the time prescribed by law.

2. A certificate of the taking of said oaths shall ^{Certificate of qualification; where filed.} be filed and recorded in the office of the clerk of the county court of the county in which the judge resides.

3. Any judge who shall, before taking said oaths, ^{Penalty for failure to qualify.} discharge or attempt to discharge said duties shall be fined five hundred dollars.

4. All acts and parts of acts coming within the ^{Acts repealed.} purview of this act, shall be and the same are hereby repealed.

CHAPTER VIII.

AN ACT providing for the qualification of the governor and other executive officers, and their clerks.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia :

1. That the governor, superintendent of free schools, ^{Oath of office} auditor, treasurer, attorney general, secretary of state, and the clerks in the executive department, shall, before entering upon the duties of their offices, un-

Who may administer.

Where the fact of qualification to be recorded.

Such qualification to be valid.

Failure to qualify; penalty for.

der the provisions of the present constitution, take an oath to support the constitution of the United States, and to support the constitution of the state of West Virginia, and an oath faithfully to discharge the duties of their office; which oath shall be administered by a judge or some other officer within this state authorized to administer oaths; a certificate of the taking of the said oaths shall be filed and recorded in the office of the secretary of state. Such qualification shall be valid and have the same force and effect as if said oaths had been taken within the time prescribed by law.

2. Any of the officers named in this act, who shall discharge, or attempt to discharge, the duties of their office without taking said oaths, shall be fined five hundred dollars.

CHAPTER IX.

AN ACT to amend and re-enact chapter one hundred and fourteen of the code of West Virginia, concerning general provisions relating to the courts.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia :

Jurisdiction of circuit and county courts in counties on water courses.

1. When any river or water course lies between any counties in this state, the circuit and county courts for the counties on each side, respectively, shall have concurrent jurisdiction over so much thereof as is opposite to said counties. And the circuit and county courts for counties lying on the waters bounding the state shall have jurisdiction respectively over such waters opposite said counties so far as the jurisdiction of this state extends.

Power of courts to adjourn from day to day.

2. The supreme court of appeals and circuit and county courts may at any time adjourn from day to

day until the business is dispatched, or until the end of its term.

3. The supreme court of appeals may, from time to time, prescribe the forms of writs and other process, and make general regulations for the practice in such court.

Court of appeals may prescribe forms of writs, &c.

4. The proceedings of every court shall be entered in a book and read in open court by the clerk thereof. The proceedings of each day shall be drawn up at large and read the next day, except those of the last day of the term and of the day on which the court may adjourn to a future day, as prescribed in section seven of an act entitled "An act to organize the circuit courts, establish their jurisdiction and manner and mode of proceeding of said courts," which shall be drawn up and read the same day. After being corrected where it is necessary the record shall be signed by the presiding judge and, in the county court, by the president of that court.

Proceedings of courts; how drawn up, read and signed.

5. The court of appeals shall not be attended by any sheriff, but each circuit court and county court shall be attended by the sheriff of the county in which it is held, who shall act as the officer thereof.

Officer to attend court.

6. Every circuit court and county court for any county shall be held at the court house of such county, except where some other place is prescribed by law or lawfully appointed: When the court house of a county is not in a condition to be occupied, such courts shall hold their sessions at such places as may be appointed by order of the county court. A copy of such order or warrant shall be posted by the clerk of the county court at the front door of his office, at the court house door and at the place so appointed.

Places of holding courts.

7. Whenever, by reason of the destruction of any building in which courts are appointed to be held, or by reason of the place of session being in possession of, or threatened by a public enemy, or infected

When and how place may be changed.

with contagious disease, it shall seem to the governor necessary, he shall, by proclamation, appoint a place at which such courts shall be held, so long as such reason may continue, and, when the circumstances require it, may postpone the time for holding the courts.

Not to be without
county limits.

8. No such place of session for a circuit or county court shall be without the county limits of the county in which they are to be held. And when such place is appointed because of the destruction of the building in which the supreme court of appeals was held, the new place of session shall be within the same town with the old.

Proclamation
changing place of
of holding court;
to whom sent.

9. A copy of such proclamation shall be sent to the clerk and to each of the judges of any such supreme court of appeals and circuit courts, and the president of any such county court.

Failure of court to
meet on the day
appointed, &c.; how
provided for.

10. Though a court be not held on the first day of a term, it may nevertheless be opened on any subsequent day: Provided, in the case of a circuit or county court, the same be done before four o'clock in the afternoon of the third day. If, after a court is opened, it fail to sit on any day, it may nevertheless sit on any subsequent day of the term; Provided, in the case of a circuit or county court there be not more than three consecutive days of such failure.

Cases not to be dis-
continued from fail-
ure of court to meet
on the day ap-
pointed, &c.

Custody of records
and papers.

11. When the place of holding any court, or the day for commencing any term, is changed, or when a court fails to sit on any day appointed for it, or to which it may have adjourned, there shall be no discontinuance, but every notice, recognizance or process, taken or returnable to the day on which the failure occurred, or to any day between that day and the next that the court may sit, or to the day and place as it was before such change, and all matters ready for the court to act upon if it had been held on any such day, shall be in the same condition and have

the same effect as if given, taken or returnable, or continued, to the substituted term or place, or to the next day of the same term that the court may sit, or to the next court in course, as the case may be.

12. All causes upon the docket of any court, and all other matters ready for its decision which shall not have been determined before the end of a term, whether regular, adjourned or special, shall, without any order of continuance, stand continued until the next term.

Causes not determined before end of term stand continued.

13. This act shall be in force and take effect on the thirty-first day of December, 1872.

CHAPTER X.

AN ACT regulating and fixing the fees of officers.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia :

Secretary of the State.

1. The secretary of the state may charge for services rendered in his office, the following fees, to be paid by the person for whom the service is rendered at the time it is done: for a testimonial, one dollar and fifty cents; for a copy of any paper if one sheet, one dollar; and for each sheet after the first, seventy-five cents; for issuing a commission to a commissioner in another state, five dollars; for issuing a commission to each notary public, two dollars and fifty cents; for making out a requisition for a fugitive from justice demanded of another state, two dollars; for issuing a warrant for the arrest of a fugitive demanded by the executive authority of another state, two dollars: Provided, no fee shall be allowed for issuing a commission to any public officer other than

those specified in this section. These fees shall be paid by the person for whom the service is rendered at the time it is done.

2. Each of the officers hereinafter mentioned may, for services performed by virtue of his office, charge the following fees, to-wit:

A Surveyor.

Fees of

For all surveying actually done, (unless by special contract,) for the first hundred poles or any less distance, long measure per pole, one cent.

After the first one hundred poles, long measure per pole, half cent.

For tracing and examining old surveys to ascertain the true bearing of lines, their distances and courses, or for doing surveying in and about any mines, cities, towns and villages the surveyor may charge three dollars for every day necessarily so employed, in lieu of charging by the pole: Provided, that nothing in this section shall prevent any party having surveying done, making a contract for a different compensation.

For calculating the quantity of less than six courses or lines, fifty cents.

When land is divided, for calculating each division of less than six courses, fifty cents.

For every course or line of more than six, three cents.

For making a plat of six courses or less, fifty cents.

For every course more than six, three cents.

For recording a plat and certificate, if not more than six courses, fifty cents.

For every course above six, three cents.

For copying a plat and certificate where there are not more than six courses, fifty cents.

For every course above six, three cents.

For a copy of an entry, fifty cents.

For every search where no copy is required, fifteen cents.

For giving receipt for any paper, fifteen cents.

For traveling to the place of surveying and returning, per mile, five cents.

3. If surveying be done at different places, on the same tour, the mileage shall be apportioned among the different surveys according to their distance from the residence of the surveyor or deputy and each other, so that the surveyor shall not receive more than five cents a mile for going and returning for any one trip.

Mileage : how apportioned.

A Notary Public.

4. When there is a protest by him, for the record thereof, making out instrument of protest under his official seal and notice of dishonor to one person besides the maker of a note or acceptor of a bill, one dollar.

For every additional notice, ten cents.

For taking and certifying the acknowledgment of any deed or writing, or taking and certifying the privy examination and acknowledgment of a married woman, fifty cents.

For administering and certifying an oath, unless it be the affidavit of a witness, twenty-five cents.

For taking and certifying affidavits or depositions of witnesses, where done in an hour, seventy-five cents.

If not done in an hour, for any additional time, at the rate per hour of seventy-five cents.

For other services the same fees as the clerk of the county court for like services.

A Commissioner in Chancery.

5. For any service, such fees as the court of which he is commissioner, may from time to time prescribe, not exceeding seventy-five cents where less than an hour is employed, and if more than an hour be employed, not exceeding the rate of seventy-five cents

Fees of.

Must annex certificate to report ;

for each hour. A commissioner returning a report shall annex thereto a certificate, under oath, that he was actually and necessarily employed for a number of hours, to be therein stated, in performing the services for which the fees stated at the foot thereof are charged. Until such certificate is made, no bill shall be made out for such fees. A commissioner shall not be compelled to make out or return a report until his fees therefor be paid or security given him to pay so much as may be adjudged right by the court to which the report is to be returned, or if it be a circuit court, by the judge thereof in vacation, unless the court or judge see cause to order it to be made out and returned without such payment or security, and shall so order.

Right to require payment of fees or security therefor.

Special Commissioners.

Fees of.

6. For making deeds or other instruments of writing, not exceeding five dollars for each deed or other instruments of writing, to be fixed by the court appointing said commissioner. For selling property under decree of court, to be fixed by the court, not exceeding five per centum on the first three hundred dollars, and two per centum on the residue.

Receivers of Courts.

Fees of.

7. For receiving and paying over money, to be fixed by the court, not exceeding two per centum.

Clerk of the County Court.

Fees of.

8. When a writing is admitted to record under chapter seventy-three of the code, for everything relating to it except the recording in the deed book, to-wit: -

For receiving proof or acknowledgment, entering orders, writing on it clerk's certificate, statement of deed in list entered in order book, posting same, em-

bracing it in list for assessor, and indexing in general index, fifty cents.

For recording a plat of not more than six courses, or for a copy thereof, fifty cents.

For every course above six, three cents.

For recording in the deed book such writing, and all matter therewith, (except plats,) or for recording anything not otherwise provided for, for every thirty words, three cents.

In lieu of the said allowance of three cents for every thirty words, the clerk may, for recording in the deed book, elect to charge the following specified fees, to-wit:

Where the writing is a deed of trust or mortgage, or is a conveyance of real or personal estate, or of real estate only, fifty cents.

And where it is not such, seventy-five cents.

For recording, indexing and noting release of lien, fifty cents.

For swearing the witnesses and entering in the order, or minute book, all orders in relation to the proof of a will which is admitted to record without contest, and copying such orders on the will or on a paper annexed thereto, fifty cents.

For recording a will and the matter recorded therewith in the will book, at the option of the clerk, three cents for every thirty words or a specific fee of fifty cents.

If there be an order committing a decedent's estate to an officer, for entering and copying such order and the orders of appraisement, fifty cents.

If any personal representative or guardian qualify for administering necessary oaths, making out bond, entering and copying on the will order granting probate or administration, making one copy of such order for personal representative or guardian, entering and copying orders of appraisement, one dollar.

If several personal representatives qualify on the

same estate at the same time or term, only the same fee shall be charged as if one had qualified, to-wit: one dollar.

For entering and copying an order granting a license and administering an oath, where necessary, seventy-five cents.

On an application for a marriage license, for administering and writing certificate of oath, issuing and registering license and recording and giving receipt for certificate of marriage, one dollar.

For a search for anything in his office over a year's standing, except where the clerk at the request of counsel, searches for papers in a pending cause, ten cents.

For recording a certificate and posting a copy thereof, under the second section of chapter sixty-one of the code, fifty cents.

For making out an injunction bond, administering all necessary oaths, writing proper affidavits, making out release of errors, copying same and endorsing on the summons that such bond and release are filed, seventy-five cents.

For making out any bond, administering all necessary oaths and writing proper affidavits, fifty cents.

For issuing a writ in the nature of an ad quod damnum, one dollar.

On receiving the copy of a caveat, for entering such copy, twenty-five cents.

For issuing a summons to answer a bill with an endorsement thereon of an injunction, or of an order of attachment and recording return of same, fifty cents.

For issuing any other summons or any writ not particularly provided for, and for recording the return where proper to do so, thirty cents.

For each copy of any process which goes out of the office (with such process,) to be used in serving it, ten cents.

For noting in the process book any decree, order or process, (except a summons for a witness) and taking a receipt therefor, twenty cents.

For postage paid by the clerk on any decree, order or process, the amount of such postage.

For entering in any suit, or in a motion for judgment for money, all the attorneys for each party, or the appearance in proper person of a party having no attorney, who so appears, to be charged but once, ten cents.

For endorsing and filing each petition, declaration, bill, answer or other written pleading, each bill of exceptions, demurrer to evidence, special verdict or case agreed; each written notice of the defense relied on in ejectment, or of motion for judgment for money and each report of a commissioner, and for entering each plea, replication or other pleading, which is not written, fifteen cents.

For endorsing and filing all the depositions and affidavits of witnesses filed on the same side at any one time, or all written interrogatories at one time, from one party to another, or all the answers filed at one time to such interrogatories or the exceptions filed at one time by either party to a commissioner's report, fifteen cents.

If papers be filed on the side of the plaintiffs for which no particular fee is allowed, a fee (not for each, but the whole,) of twenty cents.

So, also, if papers be filed on the side of the defendants, for which no particular fee is allowed, a fee (not for each, but for the whole,) of twenty cents.

For issuing an attachment, with a copy of the rule or order for the same (if sent out therewith,) and recording the return thereof, where proper to do so, thirty-five cents.

For issuing a scire facias and recording the return thereof, fifty cents.

For all the rules entered in any case on the same

side at the rules for one month, when anything is done on such side at said rules, besides entering or filing a pleading or continuing the case, twenty-five cents.

Where no proceedings are had in any case during any rules, except to continue it, the fee shall be at the rate of twenty-five cents for every quarter of a year the case is so continued, and no more.

For docketing any suit, or any motion for judgment for money, ten cents, to be charged but once, except that when any case is on the court docket, if at any term there be no decision or continuance entered therein, there shall be a fee for putting it on the docket at the next term, of eighteen cents.

Where a jury is impaneled, for swearing the jury and witnesses, seventy cents.

Where no jury is impaneled, if witness be examined by the court, for swearing such witnesses for either party, twenty cents.

Where a witness claims for his attendance, for administering an oath to him and certifying such attendance, thirty cents.

For administering any oath not before provided for, and writing a certificate thereof, where the case requires one, fifteen cents.

For all judgments, decrees, orders and proceedings, (except entries of pleadings and matters otherwise provided for,) at the election of the clerk, three cents for every thirty words actually written on the order book, or a specific fee of twenty cents.

For docketing under chapter one hundred and thirty-nine of the code, a judgment, decree, bond or recognizance, twenty-five cents.

For taxing costs in any case on one side, twenty cents.

And if the case has been pending more than one year, then for every additional year ten cents.

For filing a transcript of a judgment of a justice, twenty cents.

For issuing an execution, the entry in the execution book and the record of the return, fifty cents.

For making out a transcript of the record and proceedings in any case, in due form, so that the same may be used in an appellate court, for every thirty words, three cents; and for making out in any other manner than copying, any paper to go out of the office, which is not otherwise provided for, the same, or in lieu thereof, if the clerk elect, a specific fee of twenty-five cents.

For any copy, if it be not otherwise provided for, two cents for every thirty words, or in lieu thereof, if the clerk elect, a specific fee of twenty-five cents.

For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, and writing certificate for the president of the court, or judge, if the clerk be requested to do so, forty cents.

9. The clerks of county courts shall have the same fees in chancery cases as the clerk of a circuit court for similar services. Fees in chancery cases.

A Clerk of the Circuit Court.

10. For a writ of supersedeas, or other writ not Fees of. used in a county court, fifty cents.

For making out the bond upon issuing such writ, administering oaths and taking proper affidavits, fifty cents.

Upon any such writ, for indorsing and filing the petition therefor, or where the writ is returned, for filing it, with the return thereof, fifteen cents.

For filing the record upon an appeal or on such writ, fifteen cents.

When the clerk of the court of appeals issues process on an appeal, writ of error or supersedeas, for making the bond, administering necessary oaths, writing proper affidavits, and indorsing on the pro-

cess a certificate of the execution of the bond and the names of the sureties therein, seventy-five cents.

For docketing any case a fee of twenty cents, or if the clerk elect, in lieu thereof, three cents for every thirty words entered on the rule book when it is first docketed; this fee for docketing to be charged but once, except that when any case, either at law or in equity, is on the court docket, if at any term it be left undecided, without an order of continuance, there shall be a fee for putting it on the docket at the next term, of twenty-five cents.

For all judgments, decrees, orders and proceedings, (except entries of pleadings and matters otherwise provided for,) which are entered on the same day for the same persons, at the election of the clerk, three cents for every thirty words, (actually written on the order book or upon the rule book, when final judgments are entered therein,) or a specific fee of forty cents.

After a decision by the circuit court or court of appeals, as an appellate court, for issuing an execution, making entry thereof in the execution book, and recording return, seventy-five cents;

Unless the decision be by the court of appeals in a case wherein the first judgment or decree was in a county or municipal court, in which case the fee shall be one dollar.

For taxing the damages to which a party may be entitled by reason of an injunction, appeal, writ of error or supersedeas, forty cents.

In Chancery Cases.

For issuing an attachment, or a summons with an indorsement thereon of an injunction or order of attachment, and recording return of same, fifty cents.

Every order of publication, seventy-five cents.

For process for which no other fee is allowed, twenty-five cents.

~~Fees in chancery~~

If when a bill or answer is filed, there be filed at the same time an exhibit on which the clerk indorses the name of the case and the day it is filed, for every such exhibit five cents.

When more than three exhibits are returned with a commissioner's report, (but not annexed thereto,) for indorsing and filing such exhibits, a fee, not for each, but for all filed with the same report, of twenty-five cents.

If papers be filed on the side of the plaintiffs for which no fee is before provided, a fee (not for each but for the whole of such papers,) of twenty-five cents.

And if papers be filed on the side of defendants, for which no fee is before provided, a fee (not for each but for the whole of such papers,) of twenty-five cents.

For entering in the rule book the return of all process returnable the same day, a fee, not for each defendant named therein, nor for every process, but for the whole of the defendants named in all such process, of thirty-five cents.

For all the rules entered in any case on the same side at the rules for one month, when anything is done on such side at said rules besides entering or filing a pleading or continuing the case, fifty cents.

For any execution, the entry of the case in the execution book, and the record of the return, unless a higher fee be allowed therefor, fifty cents.

For all other services not here provided for, the same fees as a clerk of the county court for similar services.

Clerk of the court of appeals.

11. For filing the record upon an appeal, one dollar. Fees of.

For docketing appeal, to be charged but once, one dollar.

For entering judgment on appeal, for every thirty words three cents, or the clerk may charge a specific fee of one dollar and fifty cents.

For all other services not here provided for, the

clerk shall have the same fees as the clerk of a circuit court for similar services.

Sheriffs

Fees of

12. For serving on any person a declaration in ejectment or an order, notice, summons or other process, where the body is not taken, and making return thereof, fifty cents.

Except that the fee for summoning a witness shall be twenty-five cents.

For serving on any person an attachment or other process under which the body is taken, sixty cents.

For carrying a prisoner to or from jail, for each mile of necessary travel either in going or returning, five cents.

For taking any bond or undertaking, sixty cents.

Where a jury is sworn in court, for summoning and impanelling such jury, one dollar.

Where a jury is summoned upon a writ of ad quod damnum, or any inquest in vacation or summoning them, one dollar; and for attending at the place of their meeting, one dollar; and in addition if the jury attend there and an inquisition be found and returned, two dollars.

For serving a writ of possession, one dollar and fifty cents.

For serving a writ of distringas on a judgment or decree for personal property if the specific thing be taken, one dollar and fifty cents.

For keeping and supporting any live stock distrained or levied on as follows:

For a horse or mule, if well fed on grain and hay or fodder, thirty-five cents per day; but if the same be kept on pasture, twelve cents per day, or such other sum in either case as the county court may from time to time prescribe. But if a mare so levied on and kept have a suckling colt, no fee shall be allowed for keeping the colt.

For a hog, five cents per day.

For each head of cattle, five cents per day.

For sheep and goats, each, three cents per day.

The officer shall be repaid any necessary expense incurred by him in keeping property not before mentioned, or in removing any property; and when after distraining or levying, he neither sells nor receives payment, and either takes no undertaking or takes one which is not forfeited, he shall, if in no default, have (in addition to the sixty cents for an undertaking, if one was taken,) a fee of three dollars unless this be more than the half of what his commission would have amounted to if he had received payment; in which case he shall (whether an undertaking was taken or not) have a fee of sixty cents at the least, and so much more as is necessary to make the said half.

Necessary expenses for keeping or removing property, not before mentioned, to be repaid.

Commission when there is neither sale, nor payment, nor undertaking.

The commission to be included in an undertaking, (when one is taken,) shall be five per centum on the first three hundred dollars of the money for which the distress or levy is, and two per centum on the residue of said money; but such commission shall not be received unless the undertaking be forfeited or the amount (including the commission) be paid to the plaintiff.

Commission upon an undertaking.

An officer receiving payment in money or selling property, shall have the like commission of five per centum on the first three hundred dollars of the money paid, or proceeding from such sale, and two per centum on the residue, except that when such payment or sale is on an execution or an undertaking, his commission shall be only half what it would be if the execution were not on such undertaking.

For receiving payment or selling property.

Every sheriff or collector shall be allowed for the collection of state taxes a commission upon the amount chargeable to him as follows: Upon the first five thousand dollars or fractional part thereof, seven and one-half per centum; upon the second five thousand dollars or fractional part thereof, five per centum; upon the third five thousand dollars or fractional part thereof, three per centum; and upon all sums exceed-

Commissions for collecting state taxes, county levy and school taxes.

Penalty for failing to pay taxes into treasury within the time required by law.

ing fifteen thousand dollars, two per centum; and should any sheriff or collector fail to pay into the treasury the taxes within the time required by law, he shall forfeit one-fifth of his commissions. For collecting the county levy, the same commissions, under the same restrictions, shall be allowed as for collecting the state taxes. For collecting county school tax, a commission of two per centum. But no commission shall be allowed upon the taxes returned delinquent, or for disbursing any state, county or school tax. If the sheriff or collector pay any taxes into the treasury before he has collected the same, he shall nevertheless have the same remedy for the collection thereof by distress or otherwise, if as the same had not been paid to the state.

To receive no commission upon taxes returned delinquent, or for disbursing school tax.

Remedy where he pays taxes before collection thereof

Justices of the Peace.

Fees of.

13. A justice of the peace shall have specific fees in each case as follows:

For issuing a summons or warrant, provided there is no trial, twenty-five cents.

Where there is a trial and no appearance, fifty cents.

Where there is a trial and defense is made, seventy-five cents.

Where there is an appeal from his judgment, one dollar.

Provided, no fees shall be charged for issuing a subpoena for a witness, and where a case is removed to the county court without trial, a fee of fifty cents only shall be charged.

For his services in all cases of misdemeanor, one dollar.

For taking and certifying the acknowledgment of any deed or writing, or taking and certifying the privy examination and acknowledgment of a married woman, fifty cents.

For taking depositions of witnesses, if done in an hour or less, seventy-five cents.

If not done in an hour, for any additional time, at the rate per hour of seventy-five cents.

For certifying proof of account or claim against the estate of a testator or intestate, ten cents.

For taking an inquest on a dead body, to be audited and paid from the treasury of the county, five dollars.

Constables.

14. For removing a person by virtue of a warrant ^{Fees of.} issued under the thirteenth section of chapter forty-six of the code, to be charged to the county, five cents for each mile of necessary travel, going and returning.

For service and return of summons to commence a suit, and for every additional summons, forty cents.

For serving and returning order of attachments, twenty cents for each garnishee summoned, and one dollar for taking property, including inventory and appraisal, besides the reasonable expenses of removing, securing and keeping the property attached.

For subpoena for each person served therewith, twenty cents.

For levying execution and posting notices of sales, twenty-five cents.

For all money collected without process, five per centum to be paid by the party for whom collection is made.

For summoning a jury and witnesses for inquest on a dead body, to be audited and paid from the treasury of the county, three dollars.

For services not otherwise provided for, the same fees as sheriffs for similar cases.

Fees of Jailors in both civil and criminal cases.

15. For receiving a person in jail, twenty-five cents, ^{Fees of.} and the like sum for discharging him therefrom.

For keeping and supporting a person confined in jail, for each day, such sum not exceeding forty cents, as the county court shall fix by order; and upon the affidavit of the jailor, the county court shall allow him out of the county treasury the amount actually paid for the fuel necessary in heating the jail.

For attendance upon the circuit and county courts and acting as janitor of the court house, not to exceed sixty dollars per annum, to be ascertained and fixed by the county court and paid out of the county treasury.

How fees are charged and fee bills made out.

Fees; to whom chargeable.

16. The fees mentioned in this act shall be chargeable to the party at whose instance the service is performed, except that fees for entering and certifying the attendance of witnesses and proceedings to compel payment for such attendance, shall be charged to the party for whom the witness attended; and except, also, as follows:

What service clerk is not to charge for.

17. No clerk shall charge for taking bond from, administering oaths to, or copying orders as to the appointment or qualification of, any county, school or district officer, or for filing the bonds or oaths of any such officer; nor for making or copying orders as to county levies, or grand juries and administering the necessary oaths.

What not to be charged for by

18. No sheriff shall charge for serving such or any other public orders, nor for summoning and impaneling grand juries.

Services rendered for state not paid for out of treasury.

19. No clerk or sheriff shall receive payment out of the treasury for any service rendered in cases of the state, except where it is allowed hereinafter or by some other act.

Fee books; by what officers kept; what entered therein and to whom submitted for inspection.

20. Every clerk of a county court and clerk of a circuit court, shall keep a fee book, wherein shall be entered the fees for every service performed by him,

and the fact of such fees being paid, or of a bill being made out therefor, whichever shall happen first. The fee books of a clerk shall be submitted to the inspection of commissioners appointed to examine the clerk's office.

21. No person shall be compelled to pay any fees before mentioned, until there be produced to him a fee bill, signed by the officer to whom the fees are due, expressing the particulars for which such fees are charged. And no such fee bill shall be made out for any service not previously performed, unless a person desire to pay before such performance, in which case there shall be mentioned in such fee bill the nature of the service, and the fact that it is to be performed; nor shall an officer for any service make out a fee bill for more than is allowed therefor. Nor shall he, for the same service attempt to obtain payment the second time; nor even make out a fee bill a second time unless he indorse the fact, and swear that the former bill remains unpaid. For each item in which an officer shall violate this section, he shall forfeit five dollars to any person prosecuting therefor; and the county or circuit court of the county in which an officer resides, may, on motion, after reasonable notice to him, quash any fee bill made out by him contrary to law.

Fee bills : how and when made out and by whom signed. Must be produced to compel payment.

Penalty for illegal demands.

How fee bill may be quashed.

How bills are made out for fees due a deceased Clerk.

22. When a clerk dies, his successor shall charge, in the fee books of the clerk's office, such lawful fees as do not appear to have been charged thereon, for services performed by the decedent, and make out fee bills for such fees, and also for any fees charged on the said books by the decedent for which he does not appear to have made out fee bills in his lifetime; except that such of those as appear to said successor to be for more than is allowed by law, shall be reduced by him so far as, in his judgment, is necessary to make them legal.

How and by whom bills are made out for fees due a deceased clerk.

What they must show on their face; by whom signed and to whom delivered.

23. The fee bills made out under the preceding section shall show on their face that they are for fees due the decedent, and shall be signed by his successor and delivered to the personal representative of such decedent as soon as practicable. Such successor shall receive for his services under this and the preceding section such compensation as the court whereof he is clerk shall adjudge to be reasonable, which shall be paid by said personal representative or by the officer who may collect said fee bills out the first proceeds of said collections.

Service in making them out; how paid.

How fee bills are collected and accounted for.

When and to whom fee bills are delivered for collection; power and duty of collecting officer.

24. Any officer mentioned in this chapter, or the personal representative of a deceased clerk, may on or before the first day of December, in any year, deliver fee bills duly signed to any sheriff or collector of the public taxes, who shall receive and endeavor to collect the same. A sheriff or collector may distrain therefor, or for any bills due himself, such property of the person to whom the fees are charged, as might be levied on under a writ of *fieri facias* against him, except as hereinafter mentioned; and the twelfth, thirteenth and fourteenth sections of chapter thirty of the code shall apply to such fee bills in like manner as to taxes.

When and how sheriff or collector accounts for fee bills collected, and returns those not collected.

25. Every sheriff or collector to whom such fee bills are so delivered, shall, on or before the first day of April next after such delivery, account therefor with the officer or the personal representative entitled thereto, by returning such as he may not have collected, with an indorsement thereon that the person so charged with the fees has no estate in his county out of which the same could be made, and by paying to such officer or representative the amount of all not so returned, deducting a commission for himself of seven and a half per centum on said amount.

Commission of collecting officer.

If he fail so to do, judgment may be obtained, on motion, against said sheriff or collector and his sureties, and his and their personal representatives, against any deputy who may have signed the receipt for said fees, or his personal representative, for the amount with which such sheriff, collector or deputy is chargeable, and damages thereon, not exceeding fifteen per centum per annum, from the said first day of April till payment. Such judgment may be on motion in the county or circuit court of the county in which said sheriff or collector resides, and if the fees be due to the clerk of the court of appeals, it may be in the county or circuit court of the county in which the seat of government may be. On such motion any receipt for fees mentioned in the notice as signed by any person, shall be deemed to be his signature, unless an affidavit be filed denying it, and shall be prima facie evidence of the collection of all the fees mentioned therein, not returned as aforesaid.

Remedy for what officer is chargeable with.

26. No fee bill shall be collected by distress or suit after five years from the end of the year in which the service was performed that is charged therein, unless within five years before the institution of such proceeding it was returned by an officer with such indorsement thereon, (properly dated,) as is mentioned in the preceding section.

within what time fee bills may be collected.

27. An officer or witness to whom for fees or attendance anything is due that is taxed in costs for which there is payment or decree, may, within one month after such payment or decree, lodge in the clerk's office of the court wherein the same is rendered, his fee bills for such fees or certificate for such attendance. The amount due each officer or witness for what is so lodged shall, and the amount due the clerk himself for fees so included, may, within the said month, be noted in the margin of the order or execution book, opposite the entry of the case. An officer or witness whose fees or certificate may be so

How officer or witness may collect fees out of costs of suits, &c.

Duty of the clerk in relation to such fees

noted shall be paid the same out of the costs by the person against whom the judgment or decree is; and the right to such payment shall be valid against any assignee of the judgment or decree. When the clerk issues execution in such case, he shall indorse thereon how much of said costs is for each officer or witness whose fees or certificate may be so noted; and the officer collecting said costs shall pay the same accordingly to those entitled thereto.

When officer may demand his fees or security before performing services.

28. No officer mentioned in this act shall be obliged to perform services for a non-resident of this state unless payment of his fees for said services be secured; nor to perform services for any person against whom he has had fee bills returned which remain unsatisfied, unless he be secured payment of his fees for the services desired or performance of said services be directed by a court.

Fees of constables and justices in certain cases to be charged to county, except when there is no conviction.

29. In all criminal cases other than felony, search warrants and proceedings under chapter one hundred and fifty-six of the code, the fees of justices and constables shall be charged to the county and audited and paid as other claims against the county: Provided, however, that if there is no conviction before the county or circuit court, then the person making the complaint before the justice shall pay said fees, and the county shall in no event, unless there is a conviction as aforesaid, be liable for or pay any such fees.

Payment to officers out of the treasury.

Payment of fees out of treasury.

30. There shall be paid out of the treasury to clerks and sheriffs the following fees after the same are duly certified to the auditor, viz:

To clerks of county and circuit courts.

To a clerk of a circuit or county court for services rendered the state in a civil case, such fees as would be chargeable for the like services to an individual.

To a sheriff or other officer for an arrest for felony, one dollar; and for conveying any person charged

with or convicted of felony, to jail or from one jail to another, or to the penitentiary, for each mile in going and returning, ten cents. The officer shall also be allowed for the support of the prisoner during the removal, and for assistance to make the arrest or effect the removal, such charge as may have been necessarily incurred by him, to be shown by his own affidavit, and where he has assistance, by the affidavit also of each person employed by him; such charge for assistance not to exceed where it is in making an arrest, one dollar per day for each person employed to assist him; and not to exceed where it is in conveying a prisoner, ten cents per mile, going and returning, for each guard; for impaneling a jury in a case of felony, one dollar; and for executing a sentence of death, five dollars in addition to the expenses actually incurred by the officer in its execution.

For arresting, removing or supporting criminals.

Pay to guards.

Fees for other services.

To a jailor, in case of felony the fees prescribed by section fifteen.

To jailors in case of felony.

Jailors' fees in cases other than felony; how paid.

31. In cases of misdemeanor the fees of a jailor shall be charged to the county, and in civil cases to the party at whose instance or suit the prisoner is committed.

In other cases, how paid.

Allowances to certain county officers.

32. The county court of every county shall allow annually to the county officers hereinafter mentioned, for their public services, for which no other fee or reward is allowed by law, such sums to be paid out of the county treasury as are deemed reasonable by the court, within the limit ascertained by law, that is to say: to the sheriff, not to exceed one hundred dollars; to the clerk of the circuit court, not to exceed one hundred dollars; to the clerk of the county court not to exceed one hundred dollars; to the prosecuting attorney not to exceed two hundred and fifty-dollars,

Payment to officers by county.

Sheriff.

Clerk.

Prosecuting attorney.

Special provision
for Marshall,
Wayne, Wood,
Kanawha and Ohio
counties.

No extra compen-
sation to be allowed.

Salary not to be in-
creased or dimin-
ished.

Acts repealed.

Commencement.

except that the prosecuting attorneys in the counties of Marshall and Wayne shall be allowed annually, not to exceed four hundred dollars; in the county of Wood not to exceed five hundred dollars; in the counties of Kanawha and Ohio, not to exceed one thousand dollars; but no extra compensation shall be granted or allowed to any public officer, agent servant or contractor after the service shall have been rendered or the contract made; nor shall the salary or compensation of any public officer be incurred or diminished during his term of office.

33. All acts or parts of acts, inconsistent with this act are hereby repealed.

34. This act shall take effect and be in force from and after the first day of January, eighteen hundred and seventy-three.

CHAPTER XI.

- AN ACT providing for the qualification of presidents of the county courts, clerks of the circuit and county courts, prosecuting attorneys, sheriffs, assessors, surveyors of lands, justices of the peace and constables, who were elected on the twenty-second day of August, 1872.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia:

Officers to qualify;
who to qualify as
now prescribed by
law.

1. That all the officers mentioned in the title of this act, who have not already done so, shall within sixty days after its passage, qualify as such officers; the clerks of the circuit court, prosecuting attorneys, sheriffs, assessors, surveyors of land, justices of the peace and constables, in the manner now prescribed by law.

2. Every president of the county court shall qualify as such by taking and subscribing before some one authorized to administer oaths within his county, the oath of office prescribed in section five of article four of the constitution, which oath shall be filed in the office of the clerk of the county court of his county.

President of county court: qualification of; oath of office to be filed.

3. Every clerk of the county court shall qualify as such by taking and subscribing before some one authorized to administer oaths within his county, the oath of office now required by section five of article four of the constitution, and filing the same in the clerk's office. He shall also give bond, payable to the state of West Virginia, conditioned for the faithful performance of the duties of his office, to be approved by the circuit court of his county, or the judge thereof in vacation, and in a penalty deemed sufficient by such judge or court.

Clerk of county court: qualification of; where oath filed.

His bond: by whom approved.

4. All bonds now required to be approved by the recorder or attorney for the state and recorder, if executed after the first day of January, 1873, shall be approved by the clerk of the county court: Provided, a justice of the peace shall not be required to give any bond.

Bonds to be approved by clerk of county court.

Justices not to give bond.

CHAPTER XII.

AN ACT to authorize the Pittsburgh, Wheeling and Kentucky Railroad Company to make a contract with the Pittsburgh, Cincinnati and St. Louis Railway Company.

Approved December 20, 1872.

Be it enacted by the Legislature of West Virginia:

1. That the contract heretofore made between the Pittsburgh, Wheeling and Kentucky Railroad Com-

Contract ratified and confirmed.

pany on the one part, and the Pittsburgh, Cincinnati and St. Louis Railway Company on the other part, which said contract bears date on the ninth day of May, 1872, is hereby ratified and confirmed, and the said Pittsburg, Wheeling and Kentucky Railroad Company is hereby authorized to make and confirm said contract; and all acts of said company pursuant to said contract are hereby ratified and confirmed.

Authority to issue preferred stock to complete road.

2. The said Pittsburgh, Wheeling and Kentucky Railroad Company is hereby authorized to issue preferred stock, bearing a rate of interest in dividends, not exceeding seven per cent. per annum, sufficient in amount, in the judgment of said company, to secure the completion of said railroad. Said preferred stock to be secured according to the terms of said contract to the parties who may accept of and take the same.

How secured.

Privileges, rights and immunities of company leasing the Pittsburgh, Wheeling and Kentucky railroad.

3. The Pittsburgh, Cincinnati and St. Louis Railway Company, or any other company or corporation which may lease the said road of the Pittsburg, Wheeling and Kentucky Railroad Company shall have, and be entitled to the same privileges, rights and immunities now enjoyed by the said Pittsburgh, Wheeling and Kentucky Railroad Company in West Virginia, and may run the said road the same as though it were the said Pittsburgh, Wheeling and Kentucky Railroad Company.

CHAPTER XIII.

AN ACT providing for county courts and defining their jurisdiction.

Approved December 21, 1872.

Be it enacted by the Legislature of West Virginia :

County court.

1. For every county there shall be a court called the county court of such county. It shall be held by the president of the county court and two justices of

How held.

the peace, except where it is otherwise expressly provided; and in the absence of the president, any justice may be added to make the court, who with the other two may designate one of their own number to preside: Provided, that no justice shall sit in review of a decision made by him.

In absence of President, how court organized.

No justice to review his own decision.

2. There shall be held in each county six sessions of the county court every year; two of which shall be for the examination of matters connected with the police and fiscal affairs of the county; the other four shall be held for the trial of causes, and for the transaction of all other business within the general jurisdiction of the court, except an assessment or levy upon the property of the county. In all cases where a levy is laid, a majority of all the justices elected in the county shall be necessary to constitute a quorum for the transaction of that business.

Terms of courts.

Fiscal, police, trial of causes, &c.

Quorum.

*Amended
Ch. 219.*

3. The county court shall have original jurisdiction in all actions at law, where the amount in controversy exceeds twenty dollars; and also in all cases of habeas corpus, quo warranto, mandamus, prohibition, certiorari, and in all suits in equity; in all matters of probate, the appointment and qualification of personal representatives, guardians, committees and curators, and the settlement of their accounts; and in all matters relating to apprentices, and of all criminal cases under the grade of felony. The said court shall also have jurisdiction to hear and determine all motions and other matters cognizable therein by statute.

Original jurisdiction.

4. They shall have the superintendence and administration of the internal police and fiscal affairs of the county, including the establishment and regulation of roads, ways, bridges, public landings, ferries, mills, with authority to lay and disburse the county levies, and it shall perform such other duties and exercise such other jurisdiction as may be prescribed by law.

Jurisdiction of the court as to the internal police and fiscal affairs of the county

How matters pending before boards of supervisors to be proceeded in; unexecuted orders executed.

5. All matters that shall be pending and undetermined before boards of supervisors on the first day of January, 1873, shall be proceeded in and determined in the county court as if they had originated therein. And all orders entered by the board of supervisors, and unexecuted, shall be executed by means of process issued from the clerk's office of the said court.

To have jurisdiction of appeals from justices.

Decision to be final.

Exception.

6. They shall have jurisdiction of all appeals from the judgment of the justices, and their decision upon such appeal shall be final in all cases, except such as involve the title, right of possession or boundary of lands, the freedom of a person, the validity of a law, or an ordinance of any corporation, or the right of any corporation to levy tolls or taxes.

Practice of the courts.

7. The proceedings of the county courts shall conform as nearly as may be, to the practice of the circuit courts in like cases, except where it is otherwise provided by law.

Classification of justices.

Vacancies.

Justices classified failing to attend court, president to call others to his assistance.

8. At the first session of the county court, now elected, and at the first session of every such court after a general election, or so soon as may be, all the justices being summoned, and a majority being present, the court shall classify the justices for the performance of their duties in court, and when a vacancy shall occur in any district, the justice elected or appointed to fill the vacancy shall occupy the place in said classification of the justice who preceded him, and when any one or both the justices classified to have a session of the court, shall fail to attend, the president of the court shall call to his assistance any other justice or justices who may be present.

Times for holding courts in the counties of

9. The terms of the county court shall commence, as follows :

Barbour.

For the county of Barbour, on the first Monday in February, March, June, August, October and December, of each year.

For the county of Berkeley, on the second Monday ^{Berkeley.} in February, April, June, August, October and December, of each year.

For the county of Boone, on the third Tuesday in ^{Boone.} January, March, May, July, September and November, of each year.

For the county of Braxton on the fourth Tuesday ^{Braxton.} in January, March, May, July, September and November of each year.

For the county of Brooke on the second Monday in ^{Brooke.} February, April, June, August, October and December, of each year.

For the county of Cabell on the first Tuesday in ^{Cabell.} January, March, May, July, September and November, of each year.

For the county of Calhoun, on the fourth Monday ^{Calhoun.} in February, March, June, August, September and November, of each year.

For the county of Clay, on the third Tuesday in ^{Clay.} February, April, June, August, October and December, of each year.

For the county of Doddridge, on the third Monday ^{Doddridge.} in February, April, June, August, October and December, of each year.

For the county of Fayette, on the first Tuesday in ^{Fayette.} January, March, May, July, September and November, of each year.

For the county of Gilmer, on the second Monday ^{Gilmer.} in February, April, June, August, October and December, of each year.

For the county of Grant, on the third Tuesday in ^{Grant.} February, May, August and November, and the second Tuesday in June and December, of each year.

For the county of Greenbrier, on the first Tuesday ^{Greenbrier.} in February, April, June, August, October and December, of each year.

For the county of Hampshire, on the second Tuesday in ^{Hampshire.} January, April, June and October, and the first Tuesday in June and December, of each year.

Hancock, For the county of Hancock, on the third Monday in February, April, June, August, October and December, of each year.

Hardy For the county of Hardy, on the first Tuesday in February, May, June, August, November and December, of each year.

Harrison, For the county of Harrison, on the second Monday in February, April, June, August, October and December, of each year.

Jackson, For the county of Jackson, on the first Monday in January, May, July, August and November, and the second Monday in October, of each year.

Jefferson, For the county of Jefferson, on the third Monday in February, April, June, August, October and December, of each year.

Kanawha, For the county of Kanawha, on the third Monday in February, April, June, August, October and December, of each year.

Lewis, For the county of Lewis, on the first Monday in February, April, June; August, October and December, of each year.

Lincoln, For the county of Lincoln, on the second Tuesday in January, March, May, July, September and November, of each year.

Logan, For the county of Logan, on the second Tuesday in February, April, June, August, October and December, of each year.

Marion, For the county of Marion, on the second Tuesday in January, March, May, July, September and November, of each year.

Marshall, For the county of Marshall, on the second Monday in January, April, May, July, August and November, of each year.

Mason, For the county of Mason, on the first Monday in February, June, September and November, the second Monday in May and second Monday in December, of each year.

McDowell, For the county of McDowell, on the first Tuesday

in January, March, May, July, September and November, of each year.

For the county of Mercer, on the second Tuesday ^{Mercer}, in February, April, June, August, October and December, of each year.

For the county of Mineral, on the fourth Tuesday ^{Mineral}, in January, April, July and November, and the second Tuesday in June and December, of each year.

For the county of Monongalia, on the fourth Monday ^{Monongalia}, in March, June, September and December, and the first Monday in May and August, of each year.

For the county of Monroe, on the second Monday ^{Monroe}, in February, April, June, August, October and December, of each year.

For the county of Morgan, on the first Monday in ^{Morgan}, February, April, June, August, October and December, of each year.

For the county of Nicholas, on the second Tuesday ^{Nicholas}, in February, April, June, August, October and December, of each year.

For the county of Ohio, on the first Monday in ^{Ohio}, February, April, June, August, October and December, of each year.

For the county of Pendleton, on the fourth Tuesday ^{Pendleton}, in February, May, August and November, and the first Tuesday in June and December, of each year.

For the county of Pleasants, on the second Monday ^{Pleasants}, in January, March, May, July, September and November, of each year.

For the county of Pocahontas on the third Tuesday ^{Pocahontas}, in February, April, June, August, October and December, of each year.

For the county of Preston, on the first Monday in ^{Preston}, March, May, June, August, October and December, of each year.

For the county of Putnam, on the first Monday in ^{Putnam}, January and the second Monday in April, June, Au-

gust and November, and the third Monday in November, of each year.

Raleigh, For the county of Raleigh, on the second Tuesday in January, March, May, July, September and November, of each year.

Randolph, For the county of Randolph, on the fourth Monday in February, April, June, August, October and December, of each year.

Ritchie, For the county of Ritchie, on the second Monday in February, April, June, August, October and December, of each year.

Roane, For the county of Roane, on the third Monday in January, May, July, November and October, and the second Monday in August, of each year.

Summers, For the county of Summers, on the third Tuesday in January, March, May, July, September and November, of each year.

Taylor, For the county of Taylor, on the first Monday in January, March, May, July, September and November, of each year.

Tucker, For the county of Tucker, on the third Monday in February, April, June, August, October and December, of each year.

Tyler, For the county of Tyler, on the fourth Monday in February, April, June, August and October, and the first Monday in December, of each year.

Upshur, For the county of Upshur, on the second Monday in February, April, June, August, October and December, of each year.

Wayne, For the county of Wayne, on the third Tuesday in January, March, May, July, September and November, of each year.

Webster, For the county of Webster, on the fourth Tuesday in February, April, June, August, October and December, of each year.

Wetzel, For the county of Wetzel, on the second Monday in February, April, June, August, October and December, of each year.

For the county of Wirt, on the first Monday in Wirt.
February, March, June, August, October, and December, of each year.

For the county of Wood, on the fourth Monday in Wood.
January, March, May, July, September and November, of each year.

For the county of Wyoming, on the fourth Tuesday in January, March, May, July, September and November, of each year. Wyoming.

10. The court shall decide at the first session that Police and fiscal terms to be decided at first session of court.
is held, to which all the justices shall have been summoned, what two terms shall be held for the consideration of the police and fiscal concerns of the county.

11. This act shall go into operation on the first day Commencement.
of January, 1873.

CHAPTER XIV.

AN ACT in relation to the powers and duties of the clerks of the county court.

Approved December 21, 1872.

Be it enacted by the Legislature of West Virginia :

1. The clerk of every county court shall have the Duties and powers of recorders in certain matters transferred to clerks of county courts.
same powers and perform the same duties in relation to receiving acknowledgment or proof of admitting to record, listing and certifying deeds, contracts, powers of attorney, inventories and other writings, and docketing judgments and decrees, and bonds and recognizances having the force of judgments; and recording lis pendens and attachments, and the issuing of marriage licenses, as the recorder has or is liable to perform under the laws of this state, and shall have such fees for his services as may be prescribed by His fees.
law.

2. He shall issue all processes, attachments and To issue attachments, executions, &c.
executions and other writings necessary to be issued

from his office, and he shall receive for such services such fees as may be prescribed by law.

CHAPTER XV.

AN ACT to organize the circuit courts, establish their jurisdiction and prescribe the manner and mode of proceeding of said courts.

Approved December 21, 1872.

Be it enacted by the Legislature of West Virginia :

Judicial circuits.

Arrangement of.

First circuit.

1. There shall be nine judicial circuits in the state, and, until otherwise provided, shall be as follows :

The counties of Hancock, Brooke, Ohio and Marshall shall constitute the first circuit ;

Second,

The counties of Wetzel, Marion, Monongalia, Taylor, Doddridge and Harrison the second ;

Third.

The counties of Jefferson, Berkely and Morgan the third ;

Fourth,

The counties of Hampshire, Mineral, Grant, Hardy and Pendleton the fourth ;

Fifth,

The counties of Tyler, Pleasants, Ritchie, Wood, Wirt and Calhoun the fifth ;

Sixth,

The counties of Randolph, Tucker, Barbour, Lewis, Webster, Gilmer, Preston and Upshur the sixth ;

Seventh,

The counties of Jackson, Roane, Putnam, Kanawha and Mason the seventh ;

Eighth,

The counties of Greenbrier, Monroe, Fayette, Summers, Clay, Nicholas, Pocahontas and Braxton the eighth ; and

Ninth.

The counties of Cabell, Wayne, Lincoln, Boone, Logan, Wyoming, Mercer, Raleigh and McDowell the ninth.

Judge ; how elected.

2. For each circuit a judge shall be elected by the voters thereof, who shall hold his office for the term of eight years, unless sooner removed in the manner prescribed by the constitution. During his continu-

Term of office.

ance in office he shall reside within the circuit of where to reside which he is judge.

3. The circuit courts shall have the supervision of Jurisdiction, powers and duties, all proceedings before the county courts and other inferior tribunals by mandamus, prohibition and certiorari. They shall, except in cases contided by the constitution exclusively to some other tribunal, have Appellate jurisdiction. original and general jurisdiction of all matters at law when the matter in controversy exclusive of interest and costs exceeds fifty dollars; in cases of quo warranto, habeas corpus, mandamus or prohibition; in all cases of equity; of all felonies and misdemeanors. They shall have appellate jurisdiction upon petition and assignment of error in all cases of judgments, decrees and final orders rendered by the county court and such other inferior courts of record as may be hereafter established by law, under the provisions of the twelfth section of article eight of the constitution, where the matter in controversy, exclusive of costs, is of greater value or amount than twenty dollars;

In controversies respecting the title or boundaries of land;

The probate of wills, the appointment or qualification of a personal representative, guardian, committee or curator;

Or concerning a mill, way, road, ferry or landing, or the right of a corporation or a county to levy tolls or taxes;

Also, in cases of habeas corpus, quo warranto, mandamus, prohibition and certiorari;

In cases involving freedom or the constitutionality of a law;

And in all cases of conviction under criminal prosecutions in said court.

4. All actions, suits, motions and rules at law or All matters pending in circuit courts in existence on December 31, to be, on January 1, transferred to the circuit courts then in existence, and be tried by them, except appeals from justices in equity, indictments, presentments and information or other proceedings pending and undetermined in the circuit courts now in existence, on the thirty-first

Transfer of records
and papers.

day of December, 1872, shall, on the first day of January, 1873, be transferred to the circuit courts then in existence, and to be by them heard, tried and finally disposed of, except that all pending appeals from justices may be transferred to the county court organized in such county. The records and papers of the first named circuit courts, and the records and papers of any court not now in existence, and which are in the custody of the clerk of said first-named courts, shall be delivered and transferred by the clerks of said first-named circuit courts, to the clerks of the circuit courts in existence on the said first day of January, 1873.

Regular terms; two
each year.

5. In every year there shall be two regular terms of each circuit court, and the days for the commencement of each of said terms shall be as follows, to-wit :

In the First Circuit.

Commencement of
Hancock.

For the county of Hancock, on the first Tuesday of March and the second Tuesday of September.

Brooke

For the county of Brooke, on the second Tuesday of March and the fourth Tuesday of September.

Ohio.

For the county of Ohio, on the second Tuesday of April and the second Tuesday of October.

Marshall.

For the county of Marshall, on the second Monday of March and the second Monday of October.

In the Second Circuit.

Taylor.

For the county of Taylor, on the first day of March and the first day of September.

Monongalia.

For the county of Monongalia, on the tenth day of March and the tenth day of September.

Wetzel.

For the county of Wetzel, on the first Tuesday of April and the first Tuesday of October.

Marion.

For the county of Marion, on the seventeenth day of April and the seventeenth day of October.

Doddridge.

For the county of Doddridge, on the tenth day of May and the tenth day of November.

For the county of Harrison, on the twenty-first^{Harrison.} day of May and the twenty-first day of November.

In the Third Circuit.

For the county of Morgan, on the first Tuesday of^{Morgan.} March and the first Tuesday of September.

For the county of Berkeley, on the third Tuesday^{Berkeley.} of March and the third Tuesday of September.

For the county of Jefferson, on the fourth Tues-^{Jefferson.} day of April and the fourth Tuesday of October.

In the Fourth Circuit.

For the county of Hardy, on the first Tuesday of^{Hardy.} March and the first Tuesday of September.

For the county of Grant, on the third Tuesday of^{Grant.} March and the third Tuesday of September.

For the county of Pendleton, on the first Tuesday^{Pendleton.} of April and the first Tuesday of October.

For the county of Hampshire, on the third Tues-^{Hampshire.} day of April and the third Tuesday of October.

For the county of Mineral, on the second Tuesday^{Mineral.} of May and the second Tuesday of November.

In the Fifth Circuit.

For the county of Wood, on the first Monday of^{Wood.} March and the first Monday of August.

For the county of Pleasants, on the first Monday of^{Pleasants.} April and the third Monday of November.

For the county of Tyler, on the Tuesday after the^{Tyler.} second Monday in April, and the Tuesday after the first Monday in November.

For the county of Ritchie, on the fourth Monday^{Ritchie.} of April and the third Monday of October.

For the county of Wirt, on the Tuesday after the^{Wirt.} first Monday in May, and the Tuesday after the second Monday in October.

For the county of Calhoun, on the third Monday^{Calhoun.} in May and the first Monday in October.

In the Sixth Circuit.

Lewis, For the county of Lewis, on the first day of March and the first day of September.

Gilmer, For the county of Gilmer, on the eleventh day of March and the eleventh day of September.

Upshur, For the county of Upshur, on the twenty-second day of March and the twenty-second day of September.

Preston, For the county of Preston, on the tenth day of April and the tenth day of October.

Randolph, For the county of Randolph, on the twenty-fifth day of April and the twenty-fifth day of October.

Tucker, For the county of Tucker, on the second day of May and the second day of November.

Barbour, For the county of Barbour, on the sixth day of May and the sixth day of November.

Webster, For the county of Webster, on the twenty-second day of May and the twenty-second day of November.

In the Seventh Circuit.

Roane, For the county of Roane, on the first Monday of March and the first Monday of September.

Jackson, For the county of Jackson, on the third Monday of March and the third Monday of September.

Mason, For the county of Mason, on the first Monday of April and the first Monday of October.

Putnam, For the county of Putnam, on the third Monday of April and the third Monday of October.

Kanawha, For the county of Kanawha, on the second Monday of May and the first Monday of November.

In the Eighth Circuit.

Nicholas, For the county of Nicholas, on the fourth day of March and the fourth day of August.

Clay, For the county of Clay, on the twelfth day of March and the twelfth day of August.

For the county of Braxton, on the eighteenth day ^{Braxton,} of March and the eighteenth day of August.

For the county of Fayette, on the twenty-eighth day ^{Fayette,} of March and the twenty-eighth day of August.

For the county of Summers, on the eighth day of ^{Summers,} April and the eighth day of September.

For the county of Monroe, on the sixteenth day of ^{Monroe,} April and the sixteenth day of September.

For the county of Pocahontas, on the first day of ^{Pocahontas,} May and the first day of October.

For the county of Greenbrier, on the tenth day of ^{Greenbrier,} May and the tenth day of October.

In the Ninth Circuit.

For the county of Wyoming, on the first day of ^{Wyoming,} March and the first day of September.

For the county of McDowell, on the tenth day of ^{McDowell,} March and the tenth day of September.

For the county of Mercer, on the eighteenth day of ^{Mercer,} March and the eighteenth day of September.

For the county of Raleigh, on the twenty-fifth day ^{Raleigh,} of March and the twenty-fifth day of September.

For the county of Logan, on the fifth day of April ^{Logan,} and the fifth day of October.

For the county of Boone, on the fifteenth day of ^{Boone,} April and the fifteenth day of October.

For the county of Lincoln, on the twenty-fifth day ^{Lincoln,} of April and the twenty-fifth day of October.

For the county of Wayne, on the fifth day of May ^{Wayne,} and the fifth day of December.

For the county of Cabell, on the fifteenth day of ^{Cabell,} May and the fifteenth day of December.

6. If any term of a circuit court is about to end ^{Adjourned terms.} without dispatching all its business, the judge thereof may, by an order entered of record, adjourn the holding of such court to any future day on which he is not required by law to hold a court in some other county, and all causes on the docket of said court and

Cases not disposed of to stand continued.

Witnesses to attend adjourned term without being again summoned.

Judgments, orders and decrees rendered before or during the day on which court adjourns to a future day to be of full force and effect.

not otherwise disposed of, shall stand continued to such adjourned day, and all witnesses summoned to attend in causes so continued to such adjourned term, are required to attend said term without being again summoned. All judgments, orders and decrees rendered and made by such court before or during the day on which said court adjourns to such future day as aforesaid, shall have the same force and effect in all respects as if said court had finally adjourned on that day.

Special terms.

When held and how appointed.

Duty of clerk.

Duty of sheriff.

Adjournment of special term.

When held and how appointed.

How proceeded in.

7. If any term of such court has ended without dispatching all its business, or if there be a failure to hold any term, the judge of the circuit may, by a warrant directed to the clerk, appoint a special term thereof, and prescribe in such warrant whether a grand jury is to be summoned to attend such term. The clerk shall enter the warrant in the order book of the court, and inform the prosecuting attorney and the sheriff of such appointment, post a copy of the warrant at the door of the court house, and issue all proper process returnable to such special term; and the sheriff shall execute such process, and summon a grand jury, if required in the warrant.

8. Whenever any judge of a circuit court shall have appointed a special term of any circuit court, in the manner directed by the preceding section, and shall have afterward ascertained that he cannot hold the said special term on the day appointed for it, he may by warrant under his hand, directed to the clerk of the court, adjourn to such other day as he may deem proper. Such warrant shall be transmitted by the judge to the clerk, who shall immediately enter the said warrant in the order book of the court, and as to the said special term thereafter to be held under the said continuance, proceed in all other respects in the manner directed by the section aforesaid.

10. Whenever the situation of a prisoner confined in jail for trial in a circuit court makes it proper that his case should be disposed of before the next regular term thereof, the judge of such court may appoint a special term to be holden for the trial of the case, in the same manner as if the same had stood for trial at the next preceding term, and the court had adjourned without disposing thereof.

Special term for trial of prisoners confined in jail.

11. At any such special term any civil case may be tried which could lawfully have been but was not tried at the last preceding term that was or should have been held; and any motion cognizable by such court may be heard and determined, whether it was pending at the preceding term or not, and any criminal cause may be tried at such special term as if it were a regular term, and although at the regular term next preceding the same may have been continued; and any cause or matter of controversy in chancery, then ready for hearing, may be heard and determined; although it could not lawfully have been heard at the next preceding term that was or should have been held. Every such special term may be held by the judge of the circuit, or if he be dead or absent, by any other circuit judge who may be present; and it may be held part of its session by one judge and part by another; and such special terms may be adjourned from time to time during the intervals between the regular terms, as the judge may deem necessary for the dispatch of the business of the court.

What cases special term.

By whom held.

May adjourn from time to time, but not to interfere with regular terms.

12. Any two circuit judges may at any time make an exchange with each other of their respective circuits for a period not longer than one year, by an agreement recorded in the court in which each of them shall first sit under such exchange; and without a formal exchange of circuits. If any judge of a circuit court fail to attend the regular term of his

Judges may exchange circuits.

How and when such exchange may be made.

court, or be prevented from sitting during the whole term, or be so situated in respect to any cause pending in said court as in his opinion to make it improper for him to try it, any other circuit judge may hold said court either for the whole term or any part thereof.

Orders made out of court to be certified to, and recorded by clerk.

13. All orders and decrees made by judge out of court in a cause pending in court, shall be certified by him to the clerk of the court in which the same is pending, and be entered by such clerk in the proper order book.

Indictments found by grand juries may be certified to county courts.

14. A circuit court in which any indictment may be found by the grand jury, when in the opinion of the court it is necessary to do so to enable it to dispatch its other business, or for any other cause deemed proper by said court, may certify the indictment to the county court of the county in which the indictment shall be found for further proceedings to be had thereon; and thereupon the clerk of the circuit court shall make out a transcript of the proceedings in the circuit court upon the indictment, and, with the taxation of the costs in the circuit court, deliver the indictment to the clerk of the said county court, who shall docket the same in its proper order.

Duty of clerk.

Judgments, decrees and orders of discontinued courts; how executed.

15. Every judgment, decree or order entered in a court which shall have ceased to exist, shall be executed by the court in custody of whose clerk the record of such judgment, decree or order may remain, or by means of process issued from the clerk's office of the last mentioned court, and to such court shall be certified every judgment, decree or order of an appellate court touching any judgment, decree or order so entered, and the case be proceeded in, as if such court had rendered the same.

Power to allow appeals, award writs of error, &c.; quo warrants, habeas corpus, mandamus and prohibition.

16. Appeals may be allowed, and suits of error and supersedeas awarded to judgments, decrees and or-

ders of the county courts, by the circuit courts or the judges thereof in vacation, and said circuit courts or judges thereof in vacation may award writs of quo warranto, habeas corpus, mandamus and prohibition.

17. This act shall take effect and be in force on Commencement. and after the first day of January, 1873.

CHAPTER XVI.

AN ACT organizing the supreme court of appeals, defining its jurisdiction and powers, and prescribing its manner of proceeding.

Approved January 11, 1873.

Be it enacted by the Legislature of West Virginia:

1. That the supreme court of appeals shall consist of four judges, elected and qualified according to the constitution and laws, any three of whom shall be a To consist of four judges. quorum.

2. They shall designate one of their body to be the president of said court. In the absence of the president, any other judge designated by the judges present shall act as president. President of court. When president is absent, judges present to designate one of their number to preside.

3. Three sessions of the supreme court of appeals shall be held every year. One in Charleston, in the county of Kanawha, commencing on the second Wednesday in January: Provided, that the session in 1873 shall commence on the thirteenth day of January; one in Charlestown, in the county of Jefferson, commencing on the first Wednesday in August; and one in Wheeling, in the county of Ohio, commencing on the first Wednesday in June, and continue until the business is dispatched. Sessions; when and where held. Sessions to continue until the business is dispatched.

4. The original jurisdiction of the court of appeals shall extend to cases of habeas corpus, mandamus and prohibition. The appellate jurisdiction shall Original jurisdiction. Appellate jurisdiction.

In civil cases.

tend to civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than one hundred dollars; in controversies concerning the title or boundaries of lands; the probate of wills; the appointment or qualification of a personal representative, guardian, committee or curator; or concerning a mill, road, way, ferry or landing, or the right of a corporation or county to levy tolls or taxes; and also in case of quo warranto, habeas corpus, mandamus and prohibition; and in cases involving freedom or the constitutionality of a law. It shall

As to cases of quo warranto, habeas corpus, mandamus and prohibition.

In criminal cases.

have appellate jurisdiction in criminal cases where there has been a conviction for felony or misdemeanor in a circuit court, and where a conviction has been had in any inferior court and been affirmed in a circuit court. All suits and proceedings which shall be pending in the present supreme court of appeals, on the thirty-first day of December, in the year eighteen hundred and seventy-two, shall be proceeded in and determined by the supreme court of appeals, the judges of which were elected on the twenty-second day of August, eighteen hundred and seventy-two.

Suits and proceedings pending in the present court of appeals on December 31, 1872, to be proceeded in and determined by the supreme court of appeals, the judges of which were elected on August 22, 1872.

Court or judges in vacation may appoint a clerk, tipstaff and messenger.

5. The supreme court of appeals, or judges thereof in vacation, may appoint a clerk. They may also appoint a tipstaff and messenger for each place of holding the said court. All of which said officers shall be removable at the pleasure of said court or judges.

How removed.

Clerk to execute a bond;

6. The clerk, before entering upon the discharge of the duties of his office, shall, before the said court, or judges in vacation, execute a bond with good security in the penalty of two thousand dollars, payable to the state of West Virginia, conditioned for the faithful discharge of the duties of his office.

Penalty of;

Condition of.

State to be divided into three judicial grand divisions.

7. The state shall be divided into three judicial grand divisions, as follows: The first grand division shall consist of the counties composing the first, sec-

First division: counties composing.

ond, fifth and sixth judicial circuits; the second Second division; counties composing.
 grand division shall consist of the counties composing
 the third and fourth judicial circuits; the third grand Third division; counties composing.
 division shall consist of the counties composing the
 seventh, eighth and ninth judicial circuits. Each
 case shall be heard and determined in its own grand Each case to be heard and determined in its own grand division.
 division, except by consent of parties or their coun- Exception.
 sel, in writing, or unless the parties desiring the hear-
 ing shall have given written notice of at least thirty
 days before the commencement of the term, to the
 opposite party or his counsel of his intention to insist
 on a hearing; when the same may be heard and de-
 termined out of its grand division.

8. Before the commencement of each session of the Docket;
 court of appeals the clerk shall make out a docket of How made out.
 the causes then ready for hearing in the grand divi-
 sion where the session of the court is about to be
 held. They shall be numbered by figures, and shall
 be docketed in the order in which the records were Causes to be heard in the order in which they are docketed.
 received, and be heard in the same order, except for Exception.
 good cause shown the court may order otherwise.
 The docket shall be arranged in such order as the
 court may designate, and to each circuit the clerk
 shall assign a reasonable portion of the term. Thirty
 days before the term is to commence, the clerk shall Duty of clerk as to the arrangement of circuits;
 cause to be printed on a sufficient number of slips
 the order in which the circuits are arranged, the
 causes for trial and the days assigned to each circuit, Causes for trial, &c.
 and mail one copy thereof to each judge of the su-
 preme court of appeals, and to each judge of a circuit
 court, and ten copies to each clerk of a circuit court.
 The court shall hear the causes in that order; except
 that, when the cases from any circuit are not all In what order court to hear causes of each circuit.
 heard on the days assigned to it, they shall not be
 heard on days assigned to another circuit, when it Exception.
 will interfere with causes therefrom, but may be
 heard when there will be no such interference.

No decision to be binding authority upon inferior courts unless concurred in by three of the judges.

9. No decision rendered by the supreme court of appeals shall be considered as binding authority upon any inferior courts of this state, except in the particular case decided, unless such decision is concurred in by at least three judges of the court.

Exception.

Judgments and decrees.

Points to be considered and decided.

Reasons for decision to be in writing and preserved.

Syllabus of points adjudicated to be prepared and published in certain cases.

10. When a judgment or decree is rendered or affirmed by the supreme court of appeals, every point fairly arising upon the record of the case shall be considered and decided: and the reasons therefor shall be concisely stated in writing and preserved with the record of the case: and it shall be the duty of the court to prepare a syllabus of the points adjudicated in each case concurred in by three of the judges thereof, which shall be prefixed to the published report of the case.

Cases in which judges cannot sit.

11. If at any time there be on the docket of the supreme court of appeals, at either place of session, a case in respect to which a majority of the judges of said court are so situated as to make it improper for them to sit on the hearing thereof, that fact shall be entered of record.

Court not to hear parol testimony.

12. The supreme court of appeals shall not hear parol testimony in any case.

Powers and duties of court as to judgments and decrees of inferior courts.

13. The supreme court of appeals shall affirm the judgment, decree or order, if there be no error therein, and reverse the same in whole or in part, if erroneous, and enter such judgment, decree or order as the court whose error is sought to be corrected, ought to have entered, affirming in cases where the court is equally divided. In the case of an appeal from an order granting a new trial, or re-hearing, if the order be reversed, such final judgment, decree or order shall be rendered or made in the case as the appellant was entitled to in the court below.

Court equally divided to affirm.

As to cases of appeal from an order granting a new trial or re-hearing.

Damages awarded to appellee.

14. When any judgment, decree, or order is affirmed in the supreme court of appeals, damages shall be awarded to the appellee. Such damages,

when the judgment, decree or order is for the payment of money, shall be at the rate of [six] per centum per annum, on the whole amount of the recovery, including interest and cost, from the time the appeal took effect, until the decision of the supreme court of appeals is entered in the order book of the court below; which damages shall be in satisfaction of all interest during that time. When the judgment, decree or order is not for the payment of any money, except costs, the damages shall be such specific sum as the supreme court of appeals may deem reasonable, not being more than one hundred dollars.

Rate of;

From and until what time estimated;

When the judgment or decree is not for any money except costs.

15. When any term of a supreme court of appeals is ended, or sooner if the court so direct, the clerk thereof shall certify and by mail or otherwise transmit its decision to the clerk of the court below, except that it shall not be his duty to certify or transmit a copy of such decision unless the prevailing party shall have paid all fees due from him in the cause, and also an amount sufficient to pay the postage thereon.

• If any clerk shall fail to comply with this section for twenty days, except as aforesaid, he shall forfeit fifty dollars to any person aggrieved.

Decisions; how certified.

Penalty for failure of clerk to certify

16. The court from which any case may have come to the supreme court of appeals, shall enter the decision of the appellate court as its own, and execution thereon may issue accordingly. If such decision be received by the clerk of the court below in vacation, he shall enter it of record in his order book, and thereupon such execution may issue and such proceedings be had in the case as would have been proper if the decision had been entered in court.

Court from which case came to enter decision of appellate court as its own.

Execution and other proceedings

Duty of clerk of court below, if decision be received in vacation.

17. All acts or parts of acts inconsistent with this act, are hereby repealed.

Acts repealed.

18. This act shall be in force and take effect from and after its passage.

Commencement.

CHAPTER XVII.

AN ACT regulating appeals, writs of error and supersedeas.

Approved December 21, 1872.

Be it enacted by the Legislature of West Virginia:

1. That a party to a controversy in any circuit court may obtain an appeal, writ of error or supersedeas to the supreme court of appeals from a judgment, decree or order therein, in the following cases:

First. In civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than one hundred dollars, wherein there is a final judgment or decree.

Second. In controversies concerning the title or boundaries of land, the probate of wills, the appointment or qualification of a personal representative, guardian, committee or curator.

Third. Concerning a mill, road, way, ferry or landing.

Fourth. The right of a corporation or county to levy tolls or taxes.

Fifth. In cases of quo warranto, habeas corpus, mandamus and prohibition.

Sixth. In cases involving freedom or the constitutionality of a law.

Seventh. In a case in chancery, wherein there is a decree or order dissolving an injunction, or requiring money to be paid, or the possession or title of property to be changed.

Eighth. In any case where there is an order granting a new trial or rehearing; and in such cases, an appeal may be obtained from the order without waiting for the new trial or rehearing to be had.

Ninth. In criminal cases, where there has been a conviction for felony or misdemeanor in a circuit court, and where a conviction has been had in an inferior court, and been affirmed in a circuit court.

In what cases an appeal, writ of error or supersedeas may be had to the supreme court of appeals;

In civil cases—amount over one hundred dollars;

The title to land, probate of wills, &c.;

Concerning a mill, road or ferry, &c.;

The right to levy tolls or taxes;

In cases of quo warranto, &c.;

Freedom, or the constitutionality of a law;

Decrees dissolving injunctions, &c., in chancery;

In any case where there is an order granting a new trial, &c.;

In criminal cases.

2. Any person who is a party to such controversy, wishing to obtain a writ of error, appeal or supersedeas, in the cases named in the first section of this act, may present a petition therefor to the supreme court of appeals, or to a judge thereof in vacation, or to a judge of the circuit court, except as follows:

Cases in which petition for appeal, writ of error or supersedeas may be presented.

3. No petition shall be presented for an appeal from, or writ of error or supersedeas to, any final judgment, decree or order, whether the state be a party or not, which shall have been rendered more than five years before the petition is presented, nor to any judgment of a county or corporation court, which is rendered on an appeal from the judgment of a justice.

When prohibited.

*amended
77. p. 5-2*

4. At the instance of any person who desires to present such petition, the court in which the judgment, decree or order is, may, during the term at which it is rendered or made, or, if it be in a circuit court, any circuit judge may, within sixty days after such term is ended, make an order suspending the execution of such judgment, decree or order, (for a reasonable time, to be specified in such order,) when such person shall give bond before the clerk of said court, in such penalty as the court or judge may require, with a condition reciting such judgment, decree or order, and the intention of said person to present such petition, and providing for the payment of all such damages as any person may sustain by reason of the said suspension, in case a supersedeas to such judgment, decree or order should not be allowed and be effectual within the time so specified.

How execution may be suspended by person desiring to present such petition.

5. With such petition there shall be a transcript of the record of so much of the case wherein the judgment, decree or order is, as will enable the court or judge to whom the petition is to be presented, properly to decide on such petition, and enable the court, if the petition be granted, properly to decide the questions that may arise before it. The person

Record to be exhibited with petition.

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intending to petition shall notify the opposite party, or his counsel, of his intention; and so much of the record shall be copied as any party may desire, except as follows:

How made up.

6. Unless the person so intending to petition direct otherwise, there shall not in a chancery case be copied of the process, orders at rules, or returns or evidences of service thereof, any but such as are necessary to show that the cause was regularly matured for hearing; nor of the commissions and notices to take depositions, captions to such depositions and certificates of their having been sworn to, any more than is necessary to the decision of exceptions taken to the reading of the depositions; but the name of such witness, and the day of taking his deposition, shall be stated at the head thereof. If more than one copy of the same paper be filed in the case, only one copy of it shall be inserted. There shall not be copied an account reported by a commissioner to which there is no exception, nor any printed document of which either party will furnish to the clerk a copy, but such duplicate shall be attached to what is copied; and when a case has before been in the appellate court, there shall only be copied the proceedings subsequent to the former appeal, writ of error or supersedeas.

Court or judge may inspect former record, when case has been in such court before.

7. The appellate court, or the judge thereof, may, when a case has before been in such court, inspect the record upon the former appeal, writ of error or supersedeas. And such court may, in any case, award a writ of certiorari to the clerk of the court below, and have brought before it, when part of a record is omitted, the whole or any part of such record.

Power to award certiorari.

Petition for appeal; how prepared and certified.

8. A petition for appeal, writ of error or supersedeas, shall assign errors, and it shall not be presented until some counsel or attorney of the appellate

court shall certify that in his opinion, it is proper that the decision should be reviewed by such court.

9. The petition may be presented to the court To what court or judge presented. wherein the case is to be docketed, if the appeal, writ of error or supersedeas be allowed, or to a judge thereof, or if the judgment, decree or order, be of a county or corporation court, to any circuit judge.

10. If, upon a petition as aforesaid, the appeal, writ of error, or supersedeas be allowed by the supreme court of appeals in term, the same shall be docketed in said court, and if upon petition in any case, the appeal, writ of error or supersedeas be allowed by a judge of the circuit court, the same shall be docketed also in the supreme court of appeals. Appeals to be docketed in court of appeals.

11. The petition shall be rejected, when it is for an appeal from an interlocutory decree or order in a case which the court or judge to whom it is presented deems it most proper should be proceeded in further in the court below before an appeal is allowed therein. In a case wherein the court or judge to whom a petition is duly presented, shall deem the judgment, decree or order plainly right, and reject it on this ground, if the order of rejection so state, and the rejection be by the court in term, no other petition shall afterwards be presented to the same purpose, except that when the rejection is by a circuit court or circuit judge, the petition (or a copy thereof) and the order of rejection, with the transcript of the record, may be presented to the judge of the court of appeals. When petition to be rejected.

12. Any court or judge to whom a petition is duly presented, if of opinion that the decision complained of ought to be reviewed, may allow an appeal, writ of error or supersedeas, and in case of an appeal, (as well as of a supersedeas), may award a supersedeas When petition is allowed. to stay proceedings either in whole or in part. When supersedeas is awarded.

In what court appeal, writ of error or supersedeas shall be docketed.

13. Every appeal, writ of error or supersedeas, shall, when it is to or from a judgment, decree or order of the court of any county, be docketed in the circuit court which has jurisdiction over such county, and when it is to or from a judgment, decree or order of any other court, including all courts of limited jurisdiction within any incorporated town or city, to be docketed in the court of appeals. The clerk of the court wherein it is docketed, shall in a case in which it is allowed, on petition, issue a summons against the parties interested other than the petitioners, that they may be heard, and also issue any supersedeas which may be awarded, which summons, writ of error or supersedeas, may be served upon the party in person or his attorneys in the court from which the appeal is taken.

What process issues;

Upon whom served.

When bond to be given by petitioners or appellants.

Penalty and conditions of bond.

14. Except when an appeal, writ of error or supersedeas, is proper to protect the estate of a decedent, convict or insane person, the same shall not take effect until bond is given by the appellants or petitioners, or one of them or some other person, in a penalty to be fixed by the court or judge, by or in which the appeal, writ of error or supersedeas is allowed or entered with condition: if a supersedeas be awarded to perform and satisfy the judgment, decree or order, or any part thereof, proceedings on which are stayed, in case the said judgment, decree or order, or such part be affirmed, or the appeal, writ of error or supersedeas be dismissed; and, also, to pay all damages, costs and fees, which may be awarded against or incurred by the appellants or petitioners; and if it be an appeal from an order or decree dissolving an injunction, or dismissing a bill of injunction; with a further condition to indemnify and save harmless the surety in the injunction bond against loss or damage in consequence of his suretyship; and with condition when no supersedeas is awarded, to

pay such specific damages and such cost and fees as may be so awarded or incurred.

15. Such bond shall be taken by the clerk of the appellate court, before process is issued thereupon, except where the court of appeals is the appellate court, the clerk whereof shall indorse on the summons or supersedeas that it is not to be effectual until such bond be given before the clerk of the court below, who shall take said bond and indorse on the same process that it has been given, and the names of the sureties therein.

Clerk of appellate court to take bond.

Endorsement on process as to bond.

16. On the motion of any surety in said bond, after reasonable notice, or a rule against his principal, the appellate court may order bond to be given in such time as it may prescribe, with a sufficient security to indemnify and save himself, such surety, against all loss or damage in consequence of his suretyship, and if such order be not complied with, may order the appeal, writ of error or supersedeas to be dismissed.

How surety in such bond may obtain indemnity.

17. No process shall issue upon any appeal, writ of error or supersedeas, allowed to or from a final judgment, decree or order, if, when the record is delivered to the clerk of the appellate court, there shall have elapsed five years since the date of such final judgment, decree or order, but the appeal, writ of error or supersedeas shall be dismissed, whenever it appears that five years have elapsed since the said date before the record is delivered to such clerk, or before such bond is given, as is required to be given before the appeal, writ of error or supersedeas takes effect.

After final judgment or decree, if five years elapse before record is delivered, no process shall issue, but the case shall be dismissed; so also if bond be not given within five years.

18. In every case docketed in the court of appeals the clerk of the court shall make a table of the contents to the whole record. Of the petition, so much of the record as the counsel for any party interested or the court may direct, and the table of contents the clerk shall cause fourteen copies to be printed, preserving in the margin of the printed record the

In cases docketed in court of appeals;

How clerk to prepare records;

How printed

72-3, cl. 171

How distributed.

pageing of the record from the court below, which shall be used in printing and returned to the clerk's office. The clerk shall take care that the printing be properly done. Of the copies printed he shall deliver one to each judge, two to the counsel on each side, retain one in his office, transmit one to the clerk of the court below, (in which the case was originally decided,) and shall deliver one copy to the reporter: Provided, that it shall not be the duty of the clerk to have the record printed until the appellant or plaintiff shall deposit with him a sufficient amount to pay for the said printing, which shall be regulated by the price of the public printing, as provided by law for printing of the same character. The clerk

Clerk to superintend printing.

of the court of appeals shall superintend the printing of all records except those hereinafter provided for, and shall receive from the appellant for such services one cent for every fifteen words printed.

His compensation:

How paid for.

The cost of such printing, unless otherwise ordered by the court, shall be taxed against the opposite party, if the judgment, decree or order appealed from be reversed.

Party obtaining appeal or writ of error may have record printed.

19. A party who has obtained an appeal, writ of error or supersedeas, before filing the record in the supreme court of appeals, may have the number of copies thereof printed as required by the preceding section, and in the manner therein set forth, to be disposed of and used as in said section directed, if the clerk, upon examination, shall find it correctly done, for which service the clerk shall be entitled to one cent for every thirty words; and such fee shall be, with the costs of printing, taxed in the costs recovered in case the judgment or decree appealed from be reversed: Provided, it shall not exceed the cost fixed by said section.

In what manner printed and how disposed of.

Fee of clerk for examining record:

How taxed.

In what cases an appellate court may hear oral testimony.

20. On an appeal from an order of a county or corporation court, in a controversy concerning the probate of a will, or the appointment or qualification of a

personal representative, guardian or committee, or concerning a will, county road, way or ferry, witnesses may be examined in the circuit court, but in no case shall the supreme court of appeals hear parol testimony.

21. When any judgment, decree or order is affirmed in a circuit court for the payment of money, damages shall be awarded to the appellee at the rate of six per centum, per annum, on the whole amount of the recovery, including interest and costs, from the time the appeal, writ of error or supersedeas took effect, which damages shall be in satisfaction of all interest during that time.

What damages are awarded to appellee when judgment or decree is affirmed.

22. When any judgment, decree or order of a county court, is reversed or affirmed, the cause shall not be remanded to said court for further proceedings, but shall be retained in the circuit court, and there proceeded in unless by consent of the parties, or for good cause shown, the appellate court direct otherwise.

When circuit court reversing judgment or decree may retain the cause.

23. This act shall be in force and take effect on the thirty-first day of December, 1872.

Commencement.

CHAPTER XVIII.

AN ACT to amend and re-enact chapter one hundred and fifteen of the Code of West Virginia concerning seals.

Approved December 21, 1872.

Be it enacted by the Legislature of West Virginia:

1. For every court without one, the governor shall provide a seal, to be deposited with the clerk of the said court.

Seals for courts Governor to provide them.

2. Until provided with an official seal, every clerk of such court may use his private seal or scroll by way of seal, in cases where the use of the seal is re-

When private of clerk or scroll to have same effect as an official seal.

quired by law or usage; and whenever so used his attestation of the instrument, record or copy to which it is annexed shall set forth the fact that he is not provided with an official seal, and shall have the same force and effect as if an official seal was annexed.

Commencement.

3. This act shall take effect and be in force on the thirty-first day of December, 1872.

CHAPTER XIX.

AN ACT relating to the transfer of certain official books, records, papers and property.

Passed December 21, 1872.

Be it enacted by the Legislature of West Virginia :

Transfer of official books, records, &c.

Duty of clerks of boards of supervisors and certain county officers in relation thereto.

When doubt shall arise as to the proper custodian, to be delivered to clerk of county court.

Penalty if any clerk or officer shall fail to transfer such records, &c.

Penalty for injuring, mutilating or destroying records, &c., or permitting it to be done.

Commencement.

1. All clerks of boards of supervisors, and all county officers, except sheriffs, shall, on the first day of January, 1873, or as soon thereafter as may be, transfer to their successors in office, all official books, records, papers and property in their possession; and in cases where, from the abolition of any office, or from any other cause, a doubt shall arise as to the officer entitled to receive them, they shall be delivered to the clerk of the county court for preservation until disposition be made of them by that court.

2. Any clerk or officer mentioned in the preceding section, who shall fail to comply with the provisions thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not exceeding one hundred dollars, and any clerk or officer aforesaid, who shall injure, mutilate or destroy, or permit any one to injure, mutilate or destroy any books, records or papers appertaining to his office, shall be deemed guilty of felony, and upon conviction thereof, shall be confined in the penitentiary not less than two nor more than ten years.

3. This act shall take effect and be in force from and after its passage.

CHAPTER XX.

AN ACT to extend the time for ascertaining and certifying the result of the election held on the twenty-fourth day of October, 1872, for representatives in the Congress of the United States.

Passed December 21, 1872.

WHEREAS, It has been represented to the legislature that in some of the counties of this state the supervisors have failed or refused to ascertain the result of the election held on the twenty-fourth day of October, 1872, for representatives in the Congress of the United States, and to certify the same as required by law; therefore,

Be it enacted by the Legislature of West Virginia:

1. That in any county in this state in which the result of the election for representatives in the Congress of the United States, held on the twenty-fourth day of October, 1872, by order of the board of supervisors, or otherwise, has not been ascertained and certified by the supervisors thereof, according to the provisions of the third chapter of the code of West Virginia, it shall be the duty of the supervisors of such county to meet at the court house thereof on or before the thirtieth day of December, 1872, unless such duties shall have previously been performed, and carefully and impartially ascertain the result of said election, and prepare and transmit to the governor of the state certificates thereof, in all respects according to the provisions of the said third chapter of the code; and if a majority of the supervisors do not attend for the purpose aforesaid, it shall be the duty of those who do attend, to perform the duty hereby required, and their certificates of the result of said election shall be as valid and have the same force and effect as if a majority of the board was present; and the governor shall thereupon ascertain

Time extended in counties where the result of the election held August 22, 1872, for representatives in Congress has not been certified, to ascertain and certify the same.

Duty of supervisors;

Of the governor.

who were elected for representatives in the Congress of the United States at said election, and make proclamation thereof in the same manner and with like effect as if the result of said election had been ascertained and certified by the supervisors of the several counties within the time heretofore prescribed by law.

Additional penalty imposed upon supervisors for failing or refusing to perform their duties.

2. Any supervisor who shall, without sufficient cause, fail or refuse to perform any of the duties required by the preceding section, shall, in addition to any penalties which he may have already incurred, be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than two hundred dollars.

Commencement.

3. This act shall be in force from and after its passage.

CHAPTER XXI.

AN ACT to establish a county court and a board of commissioners for the county of Ohio, under the thirty-fourth section of the eighth article of the Constitution of the State of West Virginia.

Approved December 21, 1872.

Be it enacted by the Legislature of West Virginia:

County court: established.

1. In the county of Ohio there shall be elected, by the qualified voters thereof, on the first Monday in January, 1873, (of which not less than ten days' notice shall be given in the manner prescribed by law for holding general elections,) and on the second Tuesday in October, 1876, and on the second Tuesday of October in every fourth year thereafter, a judge for the county court of said county, who shall

By whom commissioned;

be commissioned by the governor. His term of office shall be four years, and he shall receive a salary of

Term of office;

two thousand dollars a year, to be paid out of the county treasury in quarterly installments. A vacancy in said office, if not more than one year shall remain of the term thereof, shall be filled by the commissioners of the county; but if more than one year of said term shall remain, then shall said appointment be made until the next general election, at which time said vacancy shall be filled by the election of some suitable and fit person, by the qualified voters of the county. The judge of said county court, during his term of office, shall not practice the profession of the law, or hold any other office, appointment or public trust, under the authority of this state, or any other government; and, upon acceptance thereof, shall not be, during his continuance therein, eligible to any political office. He may be removed from office by a concurrent vote of both houses of the legislature—when, from any disease or mental or bodily infirmity, he shall be incapable of discharging the duties of the office—in the manner provided by the eighteenth section of the eighth article of the constitution of this state. He shall also be subject to impeachment for malfeasance, for maladministration, for corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor, in the manner prescribed by the ninth section of the fourth article of said constitution, and, upon conviction, shall be subject to the same judgment as therein prescribed.

Salary
How paid;
Vacancy;
How filled.

During term of office, judge not to practice his profession, or be eligible to any other office.

How removed.

May be impeached for malfeasance, corruption, &c.

2. The county court shall have original jurisdiction in all actions at law where the amount in controversy exceeds twenty dollars, and also in all cases of habeas corpus, quo warranto, mandamus, prohibition, certiorari, and in all suits in equity. It shall have jurisdiction in all matter of probate, the appointment and qualification of personal representatives, guardians, committees and curators, and the settlement of their accounts; and in all matter relating to apprentices; and of all criminal cases under the grade

Jurisdiction of court;

May be limited by law;

of felony, except as hereinbefore provided. But the jurisdiction of the county court shall be subject to such limitations as may be prescribed by law. It shall have the custody, through its clerk, of all wills, deeds and other papers presented for probate or record in said county; which shall be disposed of or preserved as required by law.

Appeals from the judgments of justices; when decision of court final.

3. The said county court shall have jurisdiction of all appeals from the judgment of the justices, and its decision upon such appeals shall be final in all cases except such as involve the title, right of possession or boundaries of lands, the freedom of the person, the validity of a law, or an ordinance of any corporation, or the right of a corporation to levy tolls or taxes.

Number of sessions; commencement and jury terms.

4. There shall be ten sessions of said court in each year, four of which shall be called quarterly terms, and shall be held for the trial of jury causes, commencing on the first Mondays of January, March, May and September, to which terms grand and petit jurors shall be summoned to attend as at the terms of the circuit courts for said county. The remaining sessions of said court to be called monthly terms, shall commence on the first Mondays of February, April, June, October, November and December, to which terms neither grand nor petit jurors shall be summoned.

Monthly terms.

Districts; number of, and how laid off.

5. The said county shall be laid off into not less than ten districts, as nearly equal as may be in territory and population. The present sub-divisions of the county by townships shall constitute such districts until changed by the board of commissioners hereinafter mentioned. In each district there shall be elected by the voters thereof a commissioner, two justices of the peace, and two constables, who shall reside in their respective districts, and hold their respective offices—a commissioner for the term of two years, and justices of the peace and constables for

What to constitute present districts.

Election of officers.

Terms of office.

the term of four years. The offices of justices of the peace and commissioner shall not be considered incompatible.

6. The said county shall be divided into two assess-
ment districts; the one, to be called the city district,
shall be within the corporate limits of the city of
Wheeling; and the other, to be called the county dis-
trict, shall be the remainder of the county without
the limits of the city. In each district shall be
elected, by the voters of the county, an assessor, who
shall reside therein, and shall hold his office for the
term of four years.

Assessment dis-
tricts.

Election of assessor;
term of office.

7. The commissioners elected in the several dis-
tricts shall constitute a board, to be known as "the
board of commissioners of the county of Ohio," by
which name they may sue and be sued, and make
and use a common seal, and enact ordinances and by-
laws not inconsistent with the laws of this state.
They shall meet statedly on the first Mondays in Jan-
uary, April, June, August, October and December in
each year, at the court-house of their county, and
may hold special and adjourned meetings at any
time after their first meeting after election. They shall
elect one of their number president of the board, and
appoint a clerk, who shall hold his office at their
pleasure, and shall keep a journal of their proceed-
ings, including a record of their ordinances in a vol-
ume separate from the journal of their proceedings,
and shall perform such other services pertaining to
his office as may be by them or by law required; and
whose compensation they shall fix by ordinance and
pay from the county treasury. The said board shall
have the superintendence and administration of the
internal police and fiscal affairs of the county, in-
cluding the establishment and regulation of roads,
ways, bridges, public landings, ferries and mills, the
granting of ordinary and other licenses, with author-
ity to lay and disburse the county levies: Provi-

Board of commis-
sioners; their
powers.

When to meet.

Election of presi-
dent and appoint-
ment of clerk.

Duties of clerk

Compensation:

How paid;

Further powers of
board.

Proviso. ded, that no license shall be granted in any city, town or village, without the consent of the authorities of the same first had and obtained. All writs of ad quod damnum shall issue from the county court.

Writ of ad quod damnum.

Contested elections. The board shall, in all contested cases, judge of the election, qualification and returns of its own members, and of all county and district officers; and it shall exercise such other jurisdiction and perform such other duties as may be prescribed by law. The said commissioners shall each receive a compensation of three dollars per day for their services in court, to be paid out of the county treasury. Any commissioner may be indicted for malfeasance, misfeasance or neglect of official duty, and, upon conviction thereof, his office shall become vacant. A vacancy in the board of commissioners, whether from resignation, removal from the district, removal from office, death or other cause, shall be filled by the remaining members of the board.

Compensation.

For what commissioner may be indicted.

Vacancies; how filled.

Board authorized to order an election; 8. The board of supervisors of Ohio county is hereby authorized to order an election for the purpose of electing the officers herein provided for; but said board shall give at least ten days' notice of the time of holding said election, and the officers to be elected; at which election all the qualified voters of said county shall have the right to vote. Said election shall be held according to the laws now in force, and the result shall be certified according to law, except that the same shall be certified to the clerk of the circuit court of Ohio county, who shall declare the result, and thereupon issue certificates of election to the persons having the highest number of votes for the respective offices, except in the case of the judge of the said county court; in which case, the said clerk shall certify to the governor of the state the number of votes cast for the several candidates for the said office of judge of said court; and thereupon it shall be the duty of the governor to issue a

Notice of;

Who may vote;

How held and result certified;

To whom certified;

Who to issue certificates of election.

Exception.

commission to the candidate receiving the highest number of votes as judge of said court.

9. The persons who are now supervisors, inspectors of election and township clerks, of Ohio county, shall be the persons who shall hold and make return of the election herein provided for.

Present officers of election to conduct election herein provided for.

CHAPTER XXII.

AN ACT amending and re-enacting section one of chapter fifty-six, of the code of West Virginia, concerning the board of public works.

Passed January 14, 1873.

Be it enacted by the Legislature of West Virginia:

That section one of chapter fifty-six of the code of West Virginia, be amended and re-enacted, so as to read, as follows :

Section amended.

1. The governor, auditor, treasurer, superintendent of free schools and attorney general, shall be and continue a corporation under the style of the "Board of Public Works."

Board of public works.

CHAPTER XXIII.

AN ACT prescribing the duties and compensation of the officers of the supreme court of appeals.

Approved January 18, 1873.

Be it enacted by the Legislature of West Virginia:

1. That it shall be the duty of the clerk of the supreme court of appeals to attend, in person or by deputy, all the sessions of the said court, to obey its orders and directions in term time, and in vacation to take care of and preserve, in an office kept for the

Clerk of court of appeals; duties of.

purpose, all the records and papers of said court, and to perform such other duties as may be required of him by the said court, or which shall be prescribed by law.

Crier of court & duties of.

2. The crier of the court of appeals shall attend the sessions of the court at the place for which he is appointed; shall keep order in the court, shall have its hall kept constantly clean, ventilated and supplied with fire and water when necessary, obey the orders and directions of the court, and in all respects to be under its direction and authority; for which he shall be allowed the sum of four dollars per diem, to be paid out of the state treasury, upon the certificate of the court.

His compensation: how paid.

Messenger; duties of.

3. The messenger of the said supreme court of appeals shall constantly attend the sessions of the said court at the place for which he is appointed, and obey its orders and directions; for which he shall be allowed three dollars per diem, to be paid out of the state treasury, upon the certificate of the court.

His compensation: how paid.

Acts repealed.

4. That all acts or laws contrary to, or inconsistent with, this act, are hereby repealed.

CHAPTER XXIV.

AN ACT in relation to the jurisdiction, powers and duties of justices of the peace and constables.

Approved January 20, 1873.

Be it enacted by the Legislature of West Virginia:

Jurisdiction of justices and constables to extend throughout their counties.

1. The jurisdiction of justices and the powers and duties of constables shall extend throughout their counties.

Civil jurisdiction of justices.

2. The civil jurisdiction of justices of the peace shall extend to actions of assumpsit, debt, detinue and trover, if the amount claimed, exclusive of in-

terest, does not exceed one hundred dollars, even if the claim be for or against the town or county in which such justice resides. But in every case where the sum in controversy exceeds the amount or value of twenty dollars, the justice of the peace shall, upon the application of the defendant, either in person or by counsel, made at any time before trial, transmit the papers in the case to the clerk of the county court to be therein tried; and the clerk of the said court shall docket the same, and it shall be proceeded in as if it were a motion in said court under the sixth section of chapter one hundred and twenty-one of the code of 1868.

When and how case may be removed to county court;

How proceeded in.

3. When a balance is found in favor of a party upon a hearing before a justice, exceeding the sum for which a justice is authorized to give judgment, such party may release the excess, and take judgment for the residue.

When party may release excess, and take judgment for the residue.

4. If a justice be a party to the suit, or be interested in the result thereof otherwise than as a resident or tax-payer of the county, or be related to either of the parties as father, father-in-law, son, son-in-law, brother, brother-in-law, nephew, uncle or first cousin, guardian or ward, or be a material witness for either party, he shall not take cognizance thereof, unless all the parties to the suit consent thereto in writing.

Cases in which justices cannot take cognizance, unless all the parties consent in writing.

5. If the justice have jurisdiction of the action, any lawful process, order or notice therein, unless otherwise specially provided, may be directed to any constable of the county, or to any person specially deputed by the justice to serve or execute the same, and the officer or person to whom it is directed may serve or execute the same anywhere within the county, or upon any river or creek adjoining thereto. It may be directed to the constable by name, or by his official designation, without naming him.

Process or order of justices;

How directed

And where executed.

No jury allowed in trial of civil cases.

6. For the trial of civil cases before a justice, no jury shall be allowed.

Justices not to collect money.

7. Justices of the peace shall collect no moneys, and shall be liable for none as such officers.

Appeals from the judgments of justices shall lie to the county court;

8. Appeals shall lie from the judgments of justices to the county court, in such action, upon the same terms, within the same time as they now lie to the circuit court, and subject to the same regulations, and be proceeded in and tried as they now are in the said circuit courts.

How proceeded in and tried.

Acts repealed.

9. All acts or parts of acts inconsistent with this act are hereby repealed.

Commencement.

10. This act shall take effect from and after the thirty-first day of December, 1872.

CHAPTER XXV.

AN ACT to repeal chapter twenty-three of the acts of 1870, entitled, "An act authorizing the trustees of the Methodist Episcopal church in Oceana, Wyoming county, to sell and convey their church property," passed February 15, 1870.

Approved February 1, 1873.

Be it enacted by the Legislature of West Virginia:

Act repealed.

1. That chapter twenty-three of the acts of 1870, entitled, "An act authorizing the trustees of the Methodist Episcopal church in Oceana, Wyoming county, to sell and convey their church property," passed February 15, 1870, be and the same is hereby repealed.

CHAPTER XXVI.

AN ACT to amend and re-enact section one of an act passed the tenth day of February, 1871, entitled, "An act to amend and re-enact section one, and to repeal section two of chapter one hundred and twenty-five of the code of West Virginia."

Approved February 1, 1873.

Be it enacted by the Legislature of West Virginia : Act amended.

That section one of an act passed the tenth day of February, 1871, entitled, "An act to amend and re-enact section one, and to repeal section two of chapter one hundred and twenty-five of the code of West Virginia," be amended and re-enacted so as to read, as follows:

1. In the clerk's office of every circuit and county court, rules shall be held on the first Monday in every month, except when a term of the circuit or county court shall commence on the first Monday in a month, or either of the two following days, or on the preceding Tuesday, Wednesday, Thursday, Friday or Saturday, the rules which otherwise would have been held for the said month on the first Monday, shall be held on the last Monday in the next preceding month. The rules may continue three days but when in any case such continuance would interfere with the term of the court for which the rules are held, they shall not continue, in such case, beyond the day preceding the commencement of the term of such court. Any process heretofore issued by the clerk of the county court made returnable to any rule day not at the time provided for by law, the same shall not be for that cause quashed or held invalid; and no rule taken thereon shall be held invalid for said cause."

When rules are held, and how long.

Process heretofore issued made returnable to a rule day not at time provided for shall not be quashed or held invalid.

Rule held thereon also valid.

2. This act shall be in force from and after its passage. Commencement.

CHAPTER XXVII.

AN ACT allowing to Joseph Matthews, late sheriff of Lewis county, a credit on an execution for two hundred and eighteen dollars and sixty cents, as paid June first, 1861.

Approved February 1, 1873.

Be it enacted by the Legislature of West Virginia :

A credit of \$218.60 allowed Joseph Matthews, as paid June 1, 1861, on a judgment transferred by the State of Virginia to this state, against Abram E. Hall.

1. That the agent of the State of West Virginia, for the collection of a judgment against Abram R. Hall, late sheriff of Lewis county, and Joseph Matthews and others, his securities, transferred by the State of Virginia to this State, shall allow the said Matthews credit for two hundred and eighteen dollars and sixty cents on said judgment against said Hall, being the balance due said Matthews as sheriff of Lewis county, for excess of payments on the spring license tax for the year 1861 ; and said sum hereby allowed, shall operate as paid on said judgment as of the first day of June, 1861.

Commencement.

2. This act shall be in force from its passage.

CHAPTER XXVIII.

AN ACT to exclude a specified period from the computation of the time within which certain suits, proceedings and appeals may be brought, instituted and taken:

Approved February 6, 1873.

Be it enacted by the Legislature of West Virginia :

Computation of time in certain proceedings.

1. That in computing the time within which any civil suit, motion to recover money, proceeding or appeal shall be brought, instituted or taken, or petition filed to have proceeding reheard, by persons who could not truly make the affidavit prescribed by sec-

tion twenty-seven of chapter one hundred and six of the code of West Virginia, the period from the twenty-eighth of February, 1865, to the passage of this act, shall be excluded from such computation, and upon any proper issue, the affidavit of a party that he could not truly take such oath, shall be prima facie evidence thereof; and in all such suits, motions and proceeding, if the defendant had any claim or cross demand against the plaintiff or plaintiffs on the said twenty-eighth day of February, 1865, which he desired to set up against the plaintiff's demand, the period from the said twenty-eighth day of February, 1865, to the passage of this act, shall, in like manner, be excluded from the time within which such set-off or demand would be barred by operation of the statute of limitation.

Period excluded.

Affidavit of party prima facie evidence.

Period excluded as to any set-off or demand defendant had against plaintiff

2. All acts or parts of acts inconsistent with this act, are hereby repealed.

Acts repealed.

CHAPTER XXIX.

AN ACT concerning the surveyor's office, and prescribing where it shall be kept.

Approved February 10, 1873.

Be it enacted by the Legislature of West Virginia:

1. Every county court shall provide a separate desk in the clerk's office of such court for the safe-keeping of all the books, papers and public records belonging or appertaining to the surveyor's office, to the end that all such books, papers and public records shall be kept at the court houses of the several counties, and available for the inspection of the people of the state. Said desk shall be known as the surveyor's office. Such books, papers and public records shall be under the official possession

Duty of county courts as to books, papers and public records of surveyors.

Surveyor's office.

Clerk of court to have official possession of surveyor's papers, &c.

Exception.

Clerk may certify copies of records.

Effect of such certificate.

Surveyor may provide a separate office, and have control of his records.

Commencement.

and control of the clerk of the county court, except that when the surveyor desires to inspect any or all the said records during the usual business hours of said clerk, it shall be his right and duty to do so, and to certify copies thereof as now provided by law ; but a copy of anything appearing therein may in like manner be certified by the clerk of said county court in the absence of the surveyor, and shall have the same effect, as evidence, in all the courts of this state as if such copy was certified by the surveyor : Provided, that if the surveyor will provide a separate office at the court house for said books and papers, this act, while such office is provided, shall be inoperative as to such surveyor.

2. This act shall be in force from its passage.

CHAPTER XXX.

AN ACT to amend and re-enact section one, of chapter forty-one of the code.

Approved February 14, 1873.

Be it enacted by the Legislature of West Virginia :

Chapter amended:

That section one, of chapter forty-one of the code, is hereby amended and re-enacted so as to read, as follows :

How process may be served and executions levied when the sheriff is interested.

1. The county court of every county, shall designate one or more constables thereof to serve process and levy executions in cases where the sheriff of the county is a party defendant, or is under any other disability.

CHAPTER XXXI.

AN ACT to amend an act entitled "An act to establish a branch State Normal School at Shepherd College, in Jefferson county," passed the twenty-seventh day of February, 1872.

Approved February 14, 1873.

Be it enacted by the Legislature of West Virginia :

That chapter one hundred and one of the acts of Act amended. eighteen hundred and seventy-two, is hereby amended and re-enacted so as to read, as follows :

1. That a branch state normal school be, and the Shepherd college branch normal school established same is hereby, established at Shepherd College, in Shepherdstown, county of Jefferson, for the instruction and practice of teachers of free schools in the science of education and the art of teaching ; and the board of trustees of Shepherd College, with the state Board of regents. superintendent of free schools and their successors, shall constitute a board of regents for the government of said normal school. The said school shall be under the general supervision and control of said Powers of board. board of regents, who shall have power to pass such general laws and to adopt such general rules and regulations for its government not inconsistent with the laws of the state, as they may deem best calculated to effect the object of its establishment. They shall fix the number and compensation of the teachers to be employed therein, appoint and remove the same, prescribe the preliminary examination, the terms and conditions on which pupils shall be received and instructed in the school, and the branches of learning to be taught therein. They shall determine what shall be the number of pupils to be received from the several counties of the state, conforming as near as possible to the rates of population, and prescribe the mode of selecting the same. They may also admit into the said school, from this or any other state, as many students, who may not desire to become teachers of free schools, as they may

Graduation of students.

Board to make report to legislature.

What report to contain.

Election of president, secretary and treasurer.

Salary of secretary and treasurer.

Regents to receive no compensation, except for necessary expenses.

Duty of trustees.

Name of school.

deem proper, and upon such terms as they may prescribe. The board of regents and faculty may graduate any student of said Shepherd College, who may have pursued the studies prescribed, and found, upon examination, duly qualified, and shall certify the same by affixing their signatures and the seal of the college to his diploma. The board of regents shall transmit to the legislature, at each regular session, a full account of their proceedings under this act, together with a detailed report of the progress, condition and prospects of said school. They shall elect, at their first meeting, or as soon thereafter as practicable, out of their own number, a president, secretary and treasurer. They shall prescribe the duties of said officers, and determine what amount of compensation the secretary and treasurer shall receive for their services, not to exceed fifty dollars each per annum. No compensation shall be allowed the regents for their services as such, except for personal expenses incurred in the discharge of their duties as regents. The board of trustees of Shepherd College shall furnish and fit up suitable buildings for the purposes of said school without any cost to the state therefor. The said school shall continue to be called and known by the name of "Shepherd College."

CHAPTER XXXII.

AN ACT for the payment of Hiram Johnson for services as commissioner of the revenue of Fayette county in the year 1861.

Approved February 14, 1873.

Be it enacted by the Legislature of West Virginia:

\$250 appropriated to pay Hiram Johnson.

1. That the sum of three hundred and fifty dollars is hereby appropriated out of any moneys in the

treasury not otherwise appropriated, for the payment, in full, of Hiram Johnson, for his services as commissioner of the revenue for the county of Fayette, for the year 1861.

2. The auditor is hereby directed to draw his warrant on the treasurer for the amount hereby appropriated, or so much thereof as he may find unpaid.

Auditor authorized to draw his warrant for the amount.

CHAPTER XXXIII.

AN ACT fixing the times of holding the circuit courts of the ninth judicial circuit.

Approved February 14, 1873.

Be it enacted by the Legislature of West Virginia:

1. That the commencement of the terms of the circuit court for each of the counties of the ninth judicial circuit in each year shall hereafter be as follows:

Terms of courts in ninth judicial circuit:

For the county of Lincoln, on the first day of March and the first day of September.

For the county of Wayne, on the second Monday of March and the second Monday of September.

For the county of Logan, on the twentieth day of March and the twentieth day of September.

For the county of Boone, on the twenty-eighth day of March and the twenty-eighth day of September.

For the county of Raleigh, on the twentieth day of April and the sixth day of October.

For the county of Mercer, on the twenty-ninth day of April and the fifteenth day of October.

For the county of McDowell, on the tenth day of May and the twenty-sixth day of October.

For the county of Wyoming, on the sixteenth day of May and the first day of November.

Cabell,

For the county of Cabell, on the twenty-fourth day of May and the first day of December.

Commencement.

2. This act shall be in force from and after its passage.

CHAPTER XXXIV.

AN ACT fixing the time of holding the circuit courts for the county of Wood.

Approved February 14, 1873.

Be it enacted by the Legislature of West Virginia :

Time for holding
circuit court in
Wood county

1. That the circuit court for the county of Wood, shall be held on the first Monday of March and the first Monday of December.

Commencement.

2. This act shall be in force from its passage.

CHAPTER XXXV.

AN ACT to amend and re-enact a portion of an act entitled "An act providing for county courts, and defining their jurisdiction," approved December 21, 1872.

Approved February 18 1873.

Be it enacted by the Legislature of West Virginia :

Act amended.

1. That section nine of an act entitled "An act providing for county courts, and defining their jurisdiction," approved December 21, 1872, be and is hereby amended and re-enacted so far as said section relates to the counties of Barbour, Hampshire, Jackson, Mason, Monroe, Putnam, Preston, Randolph and Taylor; so as to read, as follows :

County courts;

Terms of, fixed in

Barbour

For the county of Barbour, on the first Monday in February, March, June, August, September and December.

For the county of Hampshire, on the second Tuesday in January, March and August, and the first Tuesday in June, October and December.

For the county of Jackson, on the first Monday in February, April, June, August, November and December.

For the county of Mason, on the third Monday in January, March, May, July, November and December.

For the county of Monroe, on the third Tuesday in February, April, June, August, October and December.

For the county of Putnam, on the second Monday in January, March, June, August, November and December.

For the county of Preston, on the first Monday in January, March, May, July, September and November.

For the county of Randolph, on the fourth Monday in February, March, June, August, September and December.

For the county of Taylor, on the third Monday in January, March, May, July, September and November.

2. This act shall be in force from and after its passage.

3. All acts or parts of acts inconsistent with this act are hereby repealed.

CHAPTER XXXVI.

AN ACT to amend and re-enact sections one and two of chapter eighty-nine of the code in relation to unlawful entry and detainer.

Approved February 19, 1873.

Be it enacted by the Legislature of West Virginia :

That sections one and two of chapter eighty-nine of the code be amended and re-enacted, so as to read, as follows :

How person turned
or kept out of pos-
session of land to
institute proceed-
ings to be restored
to it.

1. If any forcible or unlawful entry be made upon lands, or if when the entry is lawful or peaceable the tenant shall detain the possession of land after his right has expired, without the consent of him who is entitled to the possession, the party so turned out of possession, no matter what right or title he had thereto, or the party against whom such possession is unlawfully detained, may within three years after such forcible or unlawful entry or such unlawful detainer, sue out of the clerk's office of the county or circuit court of the county in which the land or some part thereof may be, a summons against the defendant to answer the complaint of the plaintiff that the defendant is in the possession and unlawfully withholds from the plaintiff the premises in question, (describing the same with convenient certainty;) and no other declaration shall be required.

Summons; when
returnable; and to
be served.

2. The summons may be returnable to and the case heard and determined at any term of such county court held for the trial of causes, or at any term of such circuit court. Such summons shall be served at least ten days before the return day thereof. If the defendant appear, he shall plead to the summons, and his plea shall be "not guilty." Upon this issue or upon the return of the first or any subsequent summons executed, if the defendant fail to plead, a jury shall be impaneled to try whether he unlawfully withholds the premises in controversy. Such cause shall have precedence for trial over all other civil causes on the docket.

Proceedings there-
upon.

CHAPTER XXXVII.

AN ACT amending and re-enacting section three of chapter ninety of the code in relation to the action of ejectment.

Approved February 19, 1877.

Be it enacted by the Legislature of West Virginia:

That section three of chapter ninety of the code be amended and re-enacted, so as to read, as follows:

Action of eject-
ment.

3. Every such action shall be brought in the cir- ^{n what court}
 cuit or county court of the county in which the said brought.
 estate or some part thereof is.

CHAPTER XXXVIII.

AN ACT changing the time for holding the circuit
 courts in the counties of Monroe, Greenbrier, Jef-
 ferson, Berkeley and Morgan.

Approved February 25, 1873.

Be it enacted by the Legislature of West Virginia :

That the time for holding the circuit courts in the ^{Circuit courts ;}
 counties of Monroe, Greenbrier, Jefferson, Berkeley ^{Terms of in}
 and Morgan, shall hereafter be as follows :

1. For the county of Monroe, on the tenth day of ^{Monroe,}
 May and the tenth day of October of each year.

For the county of Greenbrier, on the twenty-fifth ^{Greenbrier,}
 day of May and the twenty-fifth day of October of
 each year.

For the county of Jefferson, on the first Tuesdays ^{Jefferson,}
 of April and October of each year.

For the county of Berkeley, on the second Tues- ^{Berkeley,}
 days of May and November of each year.

For the county of Morgan, on the first Tuesday of ^{Morgan,}
 May and the fourth Tuesday of September of each
 year.

2. All acts or parts of acts inconsistent with this ^{Acts repealed.}
 act are hereby repealed.

CHAPTER XXXIX.

✓ AN ACT to amend and re-enact an act entitled "An act relating to appeals to the supreme court of appeals, and amending section twelve of chapter one hundred and thirty-five of the code of West Virginia," passed February 28, 1871.

Approved February 25, 1873.

Be it enacted by the Legislature of West Virginia:

Act amended.

1. That chapter one hundred and sixty-two of the acts of the legislature for 1871, is hereby amended and re-enacted so as to read, as follows: That the last clause of section twelve, chapter one hundred and thirty-five of the code of West Virginia, be amended and re-enacted, so as to read, as follows: Provided, further, that if the appellant fail to file such record with the clerk of said court of appeals within six months from the time his appeal is perfected, he shall be deemed to have abandoned his appeal, but such court, for good cause shown, may allow the same to be proceeded with; and if, from any cause beyond the control of the appellant he has been unable to have the said record filed with the clerk in proper time, the court may extend the time for filing the same.

When appellant deems to have abandoned his appeal.

When court may allow same to be proceeded with;

And may extend time for filing the appeal.

Acts repealed.

2. All acts or parts of acts inconsistent with this act are hereby repealed.

CHAPTER XL.

AN ACT regulating the payment of debts due certain banks or their representatives.

Approved February 27, 1873.

Be it enacted by the Legislature of West Virginia:

1. That debts, whether judgments, executions, or debts of any other character, due the banks or their

Debts due banks prior to April 5, 1873;

branches of this state or the state of Virginia, prior to the fifth day of April, eighteen hundred and sixty-five, or their agents, trustees or representatives, may be paid on the issue of said banks or their branches How paid. for circulation.

CHAPTER XLI.

AN ACT fixing the terms of the circuit courts of the sixth judicial circuit.

Approved February 27, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the circuit courts of the sixth judicial circuit be hereafter held as follows : Sixth judicial circuit : terms of court in counties of

For the county of Lewis, on the first day of March Lewis, and the first day of September.

For the county of Gilmer, on the eleventh day of Gilmer, March and the eleventh day of September.

For the county of Upshur, on the twenty-second Upshur, day of March and the twenty-second day of November.

For the county of Preston, on the seventh day of Preston, April and the seventh day of October.

For the county of Randolph, on the twenty-fifth day Randolph, of April and the twenty-fifth day of October.

For the county of Tucker, on the second day of Tucker, May and the second day of November.

For the county of Barbour, on the sixth day of Barbour, May and the sixth day of November.

For the county of Webster, on the twenty-fourth Webster, day of May and the twenty-fourth day of September.

2. This act shall be in force from its passage.

Commencement.

CHAPTER XLII.

AN ACT relating to and providing for official bonds and bonds taken in judicial proceedings.

Approved March 5, 1873.

Be it enacted by the Legislature of West Virginia :

Bonds taken by
courts and officers :

How payable.

Sureties therein :

How proved or
acknowledged.

How sued on.

For whose benefit
suits may be
brought.

What the proceed-
ings must show.

Who liable for
costs.

Security for costs
may be required.

Legal effect of copy
of bond or record ;

By whom certified.

Court may require
production of orig-
inal bond.

1. Every bond required by law to be taken or approved by or given before any court or officer, shall, unless otherwise provided, be made payable to the State of West Virginia, with one or more sureties deemed sufficient by such court or officer, and be proved or acknowledged before such court or officer.

2. Upon any such bond, whether taken before or after this act takes effect, and upon any bond payable to the commonwealth of Virginia heretofore taken within the territory now included in this state, suits may be prosecuted from time to time in the name of this state, if the bonds be so payable, and in the name of the state of West Virginia, successor to the commonwealth of Virginia, if the bond be payable to said commonwealth, for the benefit of this state or of any county, township, district, corporation or person injured by a breach of the condition of any such bond, until damages are recovered in the aggregate equal to the penalty thereof.

3. The proceedings in such suit must show for whose benefit it is prosecuted, and the party for whose benefit it is prosecuted shall be liable for costs if the judgment be for the defendant ; and the court may, in its discretion, require security for costs from such party according to the principles and usages of law.

4. A copy of the bond, or of the record thereof, certified by the officer in whose office it is required by law to be filed or recorded, shall be prima facie evidence of the execution and contents thereof ; but the court in which any suit upon or relating to such bond is pending, may, in its discretion, require the production of the original bond.

5. Any bond to be given upon an injunction, appeal, writ of error, supersedeas, or other proceeding in a civil suit may be made payable to the state, according to the first section of this act; and any bond to be given by an officer of a municipal corporation, county, or district, or which may lawfully be prescribed by the ordinances, by-laws or regulations thereof, may be made payable to the state as aforesaid, and suits maintained thereon as hereinbefore directed.

Bonds given in judicial proceedings by officers, corporations, counties, &c.; how payable.

Suits thereon; how maintained.

6. When a person undertaking any office is required by law to give an official bond, the condition, unless otherwise provided, shall be for a faithful discharge of the duties of his office; and such bond, with such condition, shall make such officer further liable to account for and pay over, as is or shall be required by law, all money which may come to his hands by virtue of his office.

Official bonds;

Condition of.

7. Every person elected to an office shall take the oath prescribed by the fifth section of the fourth article of the constitution; and, if bond be required of him by law, give his official bond, unless otherwise specially provided, within sixty days after he has been declared elected, or if at the time of his election he was absent from the state, or from the circuit or county for which he has been chosen, within sixty days after he has been notified of his election. In case of appointment, the same rule shall apply, unless the appointing power having the power so to do, prescribe a different time within which the person appointed is to qualify: Provided, however, that the officers elected to the office at the election held on the twenty-second day of August, 1872, from whom an official bond is or may be required, shall give such official bond within ninety days from the passage of this act, if he has not already given bond and qualified according to law: And provided, that the executive officers shall qualify on the fourth day of

Time within which officers must qualify and give bond.

Time within which officers elected August 22, 1872, must qualify and give bond.

Executive officers; when to qualify and give bond.

*Remembered
August 22, 1872.*

March next, after they are declared elected, or before they exercise the duties of their respective offices, and shall give the bond required before entering upon the said duties, except in cases of appointment to vacancies in these offices, herein otherwise provided for.

Exception.

Persons failing to qualify vacates their office.

8. If any person elected or appointed to any office fail to qualify within the time prescribed by law, the office shall be deemed vacant.

Penalty for acting in office without giving bond.

9. If a person elected or appointed to an office who is required by law to give an official bond, act in such office before he has filed his official bond according to this law, he shall forfeit not less than fifty nor more than one thousand dollars.

Bonds approved by governor to be first submitted to attorney general, or a judge or circuit or supreme court.

10. Every bond required by law to be approved by the governor shall be first submitted to the attorney general, a judge of the circuit court or supreme court of appeals for examination; and, if he be of opinion that it is in proper form and legally executed, he shall make an endorsement thereon to that effect.

What bonds to be approved by the governor;

Their penalty;

Where filed.

When governor may require regular bonds or additional security.

When governor may declare office vacant.

11. The secretary of state, auditor, treasurer, and state superintendent of free schools shall each give bond, to be approved by the governor. The bond of the secretary of state shall be in the penalty of ten thousand dollars; that of the auditor twenty thousand; of the treasurer, twenty-five thousand; of the state superintendent of free schools ten thousand dollars. The bond of the secretary of state shall be filed in the office of the auditor, and the other bonds mentioned in this section in the office of the secretary of state. It shall be the duty of the governor, in all cases of irregularity in the execution of an official bond by a state officer, or where the insufficiency of the security is made to appear, to require of such officer a regular bond or reasonable additional security, or both; and if such bond or security, or both, as may be required, is not given within thirty days after the governor has notified said officer in writing that the

same is required, the governor shall declare his office vacant.

12. The clerk of the supreme court of appeals, unless he be clerk pro tempore, shall give bond, to be approved by the court, in such penalty, not less than three thousand nor more than ten thousand dollars, as the court shall deem sufficient.

Bond of clerk of court of appeals;

By whom approved.

Penalty.

13. Every sheriff or surveyor of lands, clerk of the circuit court, clerk of the county court, or the clerk of any other court or tribunal in lieu thereof, every assessor and notary public of a county shall give bond to be approved by the county court, or other court or tribunal of the county within which such officer is to act. The penalty of such bonds shall be in an amount deemed sufficient by the court or tribunal to which the same may be submitted for approval. But the penalty in case of sheriff shall not be less than twenty thousand nor more than one hundred and fifty thousand; of surveyor of lands not less than one thousand nor more than three thousand dollars; of clerk of the county court or other tribunal not less than three nor more than ten thousand dollars; of clerk of the circuit court not less than three nor more than ten thousand dollars; of assessor not less than three thousand dollars; of constable not less than two thousand dollars nor more than ten thousand dollars; of a notary public not less than two hundred and fifty nor more than one thousand dollars.

Bonds of sheriff, surveyor, clerk of circuit and county courts, assessor, notary public and constable;

How approved.

Penalty of such bonds.

14. The bond of the clerk of the supreme court of appeals shall be filed in the office of the clerk of the circuit court for the county in which the supreme court of appeals may first sit after the execution of such bond. The bonds of sheriffs, surveyors of lands, clerks of circuit courts, assessors, constables and notaries public shall be filed in the offices of the clerks of the county courts or other tribunals. The bond of

Bond of clerk of court of appeals; where filed.

Bonds of sheriffs, surveyors, clerks of county and circuit courts, assessors, constables and notaries; where filed.

the clerks of the county courts or clerks of the tribunals substituted therefor, shall be filed in the offices of the clerks of the circuit courts of the counties in which such clerks may act.

In case of temporary appointment, bond may be reduced;

How approved and where filed.

15. Where a temporary appointment is made or a vacancy filled for any of the offices named in this act, the penalty may be reduced and bond approved by the court or other tribunal authorized by this act to approve the bond of such officer for a full term of such officer; and, where so approved, to be filed as directed by this act in cases for full terms of office.

A copy of certain official bonds must be sent to auditor;

By whom sent;

Time within which copies must be sent;

Penalty for failure.

16. A copy of the official bond of every sheriff, assessor, clerk of county court or of a substituted tribunal for a county court in any county, clerk of circuit court, clerk of supreme court of appeals and notary public, shall be sent to the auditor by the officer in whose office the original is filed within two months after the same is filed in his office. If the officer whose duty it is so to send any such copy, fail to do so within the time specified, he shall forfeit fifty dollars.

Official bonds must be recorded when properly approved.

17. The officer in whose office any official bond shall be filed as aforesaid, shall cause the same to be correctly recorded in a well bound book, upon the endorsement of the proper officer or officers, showing that the same has been approved as the law requires.

When and how new bond may be required.

18. The court or officer by whom any official bond is required by law to be approved, or the successor of any such officer, may, at any time, require from any officer by whom such bond may have been given, a new bond, to be approved by such court or officer, or the successor of such officer. If the officer so required to give a new bond shall, after being notified of the requirement, fail to comply therewith within the time required, his office shall be deemed vacant, unless the time for giving such new bond be extended or requirement be withdrawn. In case such

Office vacated if not given.

new bond be given, the former bond shall not remain in force, except as to liabilities already incurred; but in such case the sureties in the new bond shall be liable for any default of their principal, occurring after the approval of such new bond. In any case, where the sheriff or other collector of the taxes of the state has given bond, which he deems irregular, or the security was at the time of its execution or shall subsequently become insufficient, the auditor may demand a new bond, and it shall be the duty of the attorney for the state to cause notice to be served on such sheriff or collector to appear before the county court or circuit court of the county for which said sheriff was elected, (whichever court the auditor may designate therefor;) and it shall be the duty of such court, if it deem the execution of a new bond requisite or necessary, to order a new bond to be given before such court, and if not given within the time required, such court shall declare the office vacant, and order an election to fill the vacancy.

Force of former bond after new bond is given.

Liability of sureties in new bond.

When auditor may demand new bond of sheriff or other collector.

Duty of attorney for the State.

Duty of court.

If new bond be not given when required office declared vacant.

How vacancy filled.

19. When a surety in an official bond, or his personal representative, shall have reason to believe that he or the estate of his decedent is likely to suffer pecuniary loss in consequence of such suretyship he may file his petition before the county court or other tribunal established in lieu thereof in which such officer was elected, to be relieved therefrom. Upon the filing of such petition and proof that a notice of the time and place of filing the same has been served upon the principal in such bond, at least ten days before the filing thereof, such court or tribunal shall require a new bond to be given; and if any officer, being so required fail to give a new bond within the time required, his office shall be deemed vacant unless the time for giving such new bond be extended or the requirement be withdrawn.

Relief of surety in official bond;

By petition.

Proceedings in such cases.

20. Upon a new bond being given, approved or filed according to law, in the cases specified in the

New bond; when given sureties in former bond discharged.

last two sections, the sureties in the former bond and their estates shall be discharged from all liabilities for any breach of duty committed by such officer after that time.

Bonds heretofore given; when valid.

21. Every bond heretofore given by officers who may have held office prior to the first day of January, 1873, shall be valid, though it fails to conform to the provisions of this act, if there be no other lawful objection thereto. No notary public now in office, shall be required to give a new bond, but officers elected on the twenty-second day of August, 1872, who are required by this act to give bond, shall give bond as directed by and within the time prescribed for them to give bond by this act.

Notaries public now in office not to give new bond.

What officers to give bond as required by this act.

Construction of act as to bonds and officers' acts of officers whose terms commenced on January 1, 1873.

22. The bonds of officers whose terms commenced on the first day of January, 1873, and who are required by this act to give bond, shall be construed, whether so expressed or not, to apply to and embrace all official acts of such officer, since said first day of January, 1873.

Acts repealed.

23. Chapter ten of the code, and all acts and parts of acts inconsistent with this act, are hereby repealed.

Commencement.

24. This act shall be in force from its passage.

CHAPTER XLIII.

AN ACT extending the time until the first day of December, 1873, in which the Elk River Navigation Company shall have the right to complete their improvements up to Jarrett's Ford, with certain conditions.

Approved February 28, 1873.

Be it enacted by the Legislature of West Virginia:

Time extended for Elk River Navigation Company to complete their improvements.

1. The Elk River Navigation Company shall have further time until the first day of December, 1873, in

which to complete their improvements to Jarrett's Ford, on Elk river, under their present charter: Provided, said company shall, within sixty days, if possible, construct their dam or dams with a sluice fifty feet wide and down to two feet above low water mark, and constantly keep the same in that condition until a lock is completed sufficient for all purposes of navigation, at which time they may close the sluice; but should the lock at any time get into such order as to obstruct navigation, the said company shall proceed at once to re-open said sluice so that navigation shall at no time remain obstructed more than sixty days, if possible to prevent it.

Navigation not to remain obstructed more than sixty days.

2. The extension of time given to said company for the completion of their improvements provided for in the first section of this act, is subject to the provisions of chapter one hundred and fourteen of the acts of the Legislature of West Virginia, passed twenty-seventh February, 1872, entitled "An act to amend and re-enact sections four, five and nine of an act passed March 2, 1870, and as amended and re-enacted March 1, 1871, entitled 'An act to incorporate the Elk River Navigation Company.'"

Completion of improvements subject to provisions of chapter 114. acts 1872.

3. All acts and parts of acts repugnant to this act are hereby repealed.

Acts repealed.

4. This act shall be in force from its passage.

Commencement.

CHAPTER XLIV.

AN ACT to authorize cemetery associations to sell their land for other than burial purposes.

Approved March 7, 1873.

Be it enacted by the Legislature of West Virginia :

1. Any cemetery association heretofore or hereafter incorporated, whenever they deem it advisable, may sell and convey any part of their land without restriction as to its use: Provided, that the part or

Cemetery associations authorized to sell land without restrictions as to its use.

Provido.

Now sale authorized.

Notice to be given.

Desecration of any grave, monument, &c., prohibited.

No shaft or entry made, or building erected, except for cemetery purposes.

Commencement.

parts so sold shall not render any lot previously sold for burial purposes inaccessible for such purposes, or detach it from the main body of the cemetery; and provided, further, that no such sale shall be made by the trustees or other agents or officers of the association, unless authorized by a majority of the lot owners present and voting at a general or special meeting, of which meeting and its objects previous notice shall be given, by advertising the same once a week, for two weeks at least, in some newspaper of general circulation in the county where the cemetery is situated: Provided, that no desecration shall be made of any grave or monument, or any of the walks, drives, trees or shrubbery within the inclosure of such cemetery; nor shall any shaft or entry be made within the inclosure of such cemetery, or any building erected therein for any purpose whatever except for cemetery purposes.

2. This act shall be in force from and after its passage.

CHAPTER XLV.

AN ACT fixing the times of holding the county courts in the counties of Wayne, Lincoln and Cabell.

Approved March 7, 1873.

Be it enacted by the Legislature of West Virginia:

County courts;

Terms of, in

Wayne.

1. That the commencement of the terms of the county courts in each of the counties of Wayne, Lincoln and Cabell, in each year, shall hereafter be as follows:

In the county of Wayne, on the first Monday in January, April, May, July, September and November.

In the county of Lincoln, on the second Monday ^{Lincoln.} of January, April, May, July, September and November.

In the county of Cabell, on the third Monday of ^{Cabell.} January, March, April, July, September and October.

2. It shall be the duty of each of the said courts, ^{Police and fiscal terms to be fixed at first term of said courts.} at the first term thereof held after the passage of this act, by an order entered of record, to designate which of the said terms shall be limited to matters connected with the police and fiscal affairs of the ^{Trial term fixed at same term.} county, and which shall be held for the trial of causes and the transaction of other business within the general jurisdiction of such court. And each of said ^{Said terms may be changed.} courts may from time to time change any one or more of the terms so designated at any fiscal or police term, whenever in the opinion of such court it may be necessary and proper to do so.

3. All acts and parts of acts, so far as they are in- ^{Repealing clause,} consistent with the provisions of this act, are hereby repealed.

4. This act shall be in force from and after its ^{Commencement} passage.

CHAPTER XLVI.

AN ACT to amend and re-enact an act entitled "An act relating to the school district of Wheeling, passed February 5, 1872."

Approved March 11, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections two, three, four, five, eighteen and twenty-three, of the act entitled "An act relating to the school district of Wheeling, passed February 5, 1872," are amended and re-enacted so as to read as follows :

School commis-
sioners.

Their election.

Terms of office.

Board of education.

One commissioner
to be elected at
every regular bi-
ennial election for
six years.

Expiration of term
of office of present
board of education.

Who may vote for
school commis-
sioner.

Mode of voting.

Duty of officers of
election, and of
clerk of board of
commissioners

"2. At the first regular election for state or county officers to be held in the county of Ohio, there shall be elected in each district, or part of district, within the corporate limits of the city of Wheeling, three competent persons to serve as school commissioners—the person receiving the highest number of votes for the term of six years, the person receiving the next highest number of votes for the term of four years, and the next for the term of two years, from the first Monday in January succeeding the election. and until a successor is elected and qualified. The persons so elected and qualified, and their successors in office, shall constitute a board of education, to be denominated "The board of education of the school district of Wheeling." At every regular biennial election held thereafter, there shall be elected one competent person in each district, or part of district, as aforesaid, to serve as commissioner for the term of six years from the first Monday in January succeeding his election, and as successor to the person whose term of office shall then expire. The terms of office of the members and officers of the existing board of education shall terminate on the first Monday of January succeeding the first election for commissioners under this act.

"3. No person shall be allowed to vote for school commissioner who is not an actual resident of, and qualified to vote for, the mayor of the city of Wheeling; and, in any district of the county of Ohio lying partly within and partly without the city of Wheeling, separate ballot-boxes shall be provided, in which shall be deposited only ballots for school commissioners, and it shall be the duty of the officers holding elections to receive and count said ballots, and make return of the same as for other district officers; and the clerk of the board of commissioners for the county of Ohio shall, within thirty days next after such election, certify to the clerk of the said board of

education the results of said election for school commissioners.

"4. It shall be the duty of the clerk of the board of education, before the first day of January succeeding any regular election under this act, to notify the commissioners elect throughout the district of their election: and, before assuming the duties of his office, each of said commissioners shall qualify by taking and subscribing to the following oath of office: "I do solemnly swear (or affirm,) that I will faithfully discharge the duties of school commissioner of the school district of Wheeling, during the term of my office, to the best of my ability, and according to law, so help me God;" and such other oath or affirmation as may be required by law. Such oath of office may be administered by the clerk of said board, at any time on or before the first Monday of January next after the election, and the same, or a copy thereof, shall be kept by him upon the files of his office. Any vacancy which may occur in the office of school commissioner by death, resignation, refusal to serve, or otherwise, shall be filled by the board of education of the district, at any regular meeting at which such vacancy occurs, or at the first regular meeting held thereafter, by the appointment of a suitable person, resident in the sub-district in which the vacancy shall have occurred, who shall hold the office until the first regular election which shall be held after said appointment, when a successor shall be elected for the unexpired term.

Duty of clerk of board of education.

Oath of commissioners.

Who may administer oath.

At what time; where filed.

Vacancies in office; how filled.

"5. On the first Monday in January after the first election under this act, and biennially thereafter, at seven o'clock, p. m., at such place as may have been designated, there shall be held a meeting of the board, at which meeting the board shall be organized, if a majority of the members be present, by the election of one of their number as president, and of a suitable person for clerk. The president, and also

Organization of board.

Election of president and clerk.

President and clerk entitled to vote. the clerk, if he be a commissioner, shall be entitled to vote upon all questions submitted to the decision of the board. Before entering upon the duties of his office, the clerk shall, with at least two good sureties, not members of the board, to be approved by the board, enter into a bond, payable to the board of education of the school district of Wheeling, conditioned for the faithful discharge of the duties of his office, in such penal sum as the board may direct, and for good cause, a new bond and other bondsmen may from time to time be required by said board, and such bond or bonds shall be filed with the president of the board for safe keeping.

Bond of clerk.

Where filed.

District of Wheeling to be divided into sub-districts.

Grammar and graded primary schools to be established.

What taught in primary schools.

In grammar schools

Power to establish a high school

Branches to be taught in.

“18. The board of education shall divide the district of Wheeling into convenient sub-districts, having reference to the capacity of school houses built or to be built for the accommodation of pupils, and in each sub-district there shall be established by the board of education at least one grammar school and one graded primary school. In the primary schools shall be taught orthography, reading, penmanship, arithmetic and geography, to such extent as the district superintendent of schools, with the approval of the board of education, may prescribe; in the grammar schools, English grammar and United States history shall be taught, in addition to the branches named for the primary schools. No pupil shall become a member of a grammar school who shall not have first completed the course prescribed for a primary school. In the grammar schools the course shall be thorough and complete in the branches named. The board shall have power to establish one high school for the district, in which shall be taught such higher branches of learning as the district superintendent with the approval of the board of education, may designate. Until said high school shall be established, such higher branches shall be taught in the grammar schools of the district. No person

shall become a pupil in said high school who shall not first give satisfactory proof to the district superintendent of due proficiency in the branches prescribed for a grammar school.

“ 23. At the first meeting for organization under this act, and at every subsequent meeting thereafter, the board shall appoint a superintendent of schools for the district, and fix his salary. Said superintendent shall be an officer of the board, and in addition to the duties specified in this act, he shall perform such other appropriate duties with relation to the schools of the district as the board may prescribe. He shall be liable to removal by the board of education for any palpable violation of law or omission of duty. But he shall not be removed unless charges shall be preferred to the board by a member thereof, and notice of a hearing, with a copy of the charges, be delivered to him, and opportunity be given him to be heard in his defense. When the office shall become vacant from any cause, before the expiration of the term for which the superintendent shall have been appointed, the board of education shall fill the same by appointment for the unexpired term. It shall be the duty of the district superintendent to make, from the report of the clerk of the board of education, and from his own information, such report to the state superintendent of free schools of the character and financial condition of the schools of the district as may be necessary in order to secure to the district its quota of the state school fund, and to convey to said state superintendent all necessary information of the character and condition of the schools of the district. The district superintendent shall not directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any book, apparatus or furniture of any kind whatever, in the schools of the district.”

Who may attend.

District superintendent.

When and how appointed.

His salary and duties.

How removed.

Vacancies in office; how filled.

District superintendent to make report to state superintendent of schools.

Not to receive any gift, emolument or reward for recommending school books, &c.

Sections repealed.

2. Said original sections two, three, four, five, eighteen and twenty-three, are hereby repealed.

Commencement.

3. This act shall take effect from and after its passage.

CHAPTER XLVII.

AN ACT, to amend and re-enact chapter one hundred and sixteen of the code, and all acts amendatory thereto.

Passed March 12, 1875.

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and sixteen of the code of West Virginia, and all acts amendatory thereto, are hereby amended and re-enacted so as to read as follows :

Who liable to serve and who exempt as jurors.

Persons liable to serve as jurors.

"1. All white male persons, who are twenty-one years of age, and not over sixty, and who are citizens of this state, shall be liable to serve as jurors, except as hereinafter provided.

Who are exempted.

"2 The governor of the state, practicing attorneys and physicians, officers of any court, all telegraph operators actually engaged as such in any office in this state, and all persons mentioned in the second and fourth sections of chapter nineteen as exempted from military duty, (except school commissioners, persons exempted under the second section by reason of having relatives dependent upon them for support, or in the military service of the United States, or of this state, officers of the militia, who resign their commissions after serving seven years successively, and officers and members of a uniformed and armed volunteer company, who shall

have served three years,) shall be exempted from serving on juries.

“ 3. If a case of felony be for trial in a circuit court, the clerk thereof shall issue a venire facias to the sheriff of the county, commanding him to summon twenty-four qualified jurors to attend the said court on the first day of the term; which jury the court may at any time in its discretion discharge.

Felony cases; how jury summoned.

Court may discharge jury at any time.

“ 4. When any court thinks it necessary, it may order its sheriff or other officer to summon any number of jurors to attend forthwith, or at any subsequent day of the term.

Court may order sheriff to summon jurors to attend forthwith, or at any subsequent day.

“ 5. If any sheriff fail to summon jurors according to the preceding section, or shall knowingly summon persons not qualified to serve, or exempt from serving as jurors, he shall be fined by the court not exceeding twenty dollars; and if any person so summoned fail to attend as required, without sufficient excuse, he shall be fined by the court eight dollars.

Penalty for failure of sheriff to summon jurors as required, or for summoning disqualified or exempt persons.

Penalty for non-attendance of juror.

“ 6. Should the county court, or any other court or tribunal established in lieu of a county court in any county, at the levy term thereof, deem it proper to adopt another mode of summoning juries for the trial of criminal and civil causes in the courts of such county, than is provided for in the three preceding sections, such court or other tribunal may enter its determination on its minute or order book. And in such case juries for the trial of criminal and civil causes in the courts of such county shall be summoned and required to attend and serve according to the provisions of the seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and thirty-fifth sections of this act, and any other provisions thereof applicable to such mode of summoning juries.

County court may adopt another mode of summoning juries; how summoned and required to attend.

County court at every term to prepare list of jurors.

Juries, how organized and summoned.

"7. The county court, or other court or tribunal adopted in lieu of a county court, of each county, shall, at the long term thereof, when a majority of all the justices of the peace of the county are present and acting, annually prepare a list of such inhabitants of the county, not exempted as aforesaid, as they shall think well qualified to serve as jurors, being persons of sound judgment, and free from legal exception, which list shall include at least twenty persons for every thousand inhabitants in such county; but in no case shall such list include a less number than one hundred persons.

Who included in list.

Number limited.

List to be delivered to clerk of court.

"8. The list so prepared shall be delivered to the clerk of the said county court, or other court or tribunal adopted in lieu of a county court, to be by him safely kept, subject only to the inspection of the court, or of the clerk of the circuit court, or a justice of the peace, as hereinafter prescribed; and the court may strike from such list the name of any person who has been convicted of any scandalous offenses, or been guilty of any gross immorality.

Who may be stricken from list; by court.

Ballots; how prepared and kept.

"9. At the time such list is made out, the court, or other court or tribunal, adopted in lieu of a county court, shall also cause all the names upon the same to be fairly written, each on a separate paper or ballot, and shall fold or roll up the ballots so as to resemble each other as nearly as may be, and so that the name written thereon shall not be visible on the outside, and shall deposit the ballots in a secure box, to be prepared for the purpose, which shall be safely kept by the clerk, and shall be opened only by the order of the court, or other court or tribunal adopted in lieu of a county court, or as hereinafter prescribed.

How jurors selected from list.

"10. All jurors required for the trial of cases in any circuit or county court, shall be selected by draw-

ing ballots from the said box in the manner prescribed in this act, and the persons whose names are written on the ballots so drawn shall be returned to serve as jurors.

“ 11. The clerk of every court shall, at least thirty Venire facias :
when and how
issued. days before any term of such court at which a jury may be wanted, issue a writ of venire facias for thirty jurors, unless the court shall order a greater or less number, in which event the writ shall issue for such other number. Such writ shall require the attendance of the jurors on the first day of the court, or on such other day thereof as the court or judge may order.

“ 12. At the same time the clerk shall issue a sum- To whom summons
issued to draw
ballots. mons in the name of the state, requiring, if it be for the circuit court, the clerk of the county court, and if it be for the county court, the clerk of the circuit court, to attend at the clerk's office of the county When and where
ballots to be drawn. court of such county, on a day named in such summons, which shall not be less than twenty days before such term, for the purpose of drawing the ballots for the number of jurors mentioned in said writ. If the clerk of the county court be also clerk of the circuit court, the summons shall require a justice of the peace to attend for such purpose.

“ 13. The writ of venire facias and summons shall How summons
served. be delivered to the sheriff, or other officer, who shall serve the summons on the clerk of the circuit court, the clerk of the county court, or a justice of the peace, as the case may be ; and it shall be the duty How ballots drawn. of such clerk or justice of the peace to attend, on the day designated in the summons, at the clerk's office of the county court of the county, and in the presence of the clerk of the court for which the jury is to be drawn, to cause the proper number of jurors to be drawn from the box, and a list thereof to be deliv- To whom list
delivered. ered to the officer serving the summons.

Who to draw jurors
if person sum-
moned fail to
attend.

“14. If the clerk or justice aforesaid fail to attend as required by said summons, such jurors shall be drawn by the clerk of the court for whose court the jury is to be summoned, in the presence of some other justice called for that purpose, whose duty it shall be to place the list thereof in the hands of the sheriff or other officer. And it shall be the duty of such officer, at least three days before the time when the jurors are required to attend, to summon each person who is drawn to attend the sitting of the court at the time and place mentioned in the writ, and make a due return thereof, and of the summons aforesaid, to such court at the opening thereof.

Sheriff or other
officer to summon
jurors, &c.

Who to draw the
ballots.

“15. When jurors are to be drawn as aforesaid, the ballots in the jury box shall be shaken and mixed together, and the clerk or justice shall openly draw therefrom as many ballots (without inspecting the names written on any until the proper number is drawn,) as shall be equal to the number of jurors required; and if any person, whose name is so drawn, is exempted by law, or is unable, by reason of sickness, absence from home, or other cause, to attend as a juror, his name shall be returned into the box; or, if his name has been struck from the jury list, the ballot shall be destroyed, and another shall be drawn in its stead.

If juror exempted,
how his place
supplied.

When a juror is
drawn, how ballot
is indorsed.

“16. When any person is drawn and returned to serve as aforesaid, the clerk or justice shall cause to be indorsed on the ballot containing his name the word “drawn,” and shall return it to the box, and the date of the draft shall be entered on the list of jurors opposite his name.

No person to serve
but once a year.

“17. No person who, in pursuance of such draft, has actually attended any court, and served as a juror, shall be liable to be drawn again during the same year, unless all the persons whose names are in the jury-box have been drawn to serve during such year.

"18. Nothing contained in the preceding sections shall prevent any court from issuing writs of venire facias in term time for additional jurors, or requiring other jurors to be summoned by the sheriff without such writ, whenever it shall be found necessary for the convenient dispatch of business; in which case the writ, if issued, shall be served and returned, and the jurors shall be required to attend on such days as the court shall direct.

Power of court to issue writs of venire facias and require sheriffs to summons other jurors in term time.

"19. On the day when the jurors are summoned to attend at any court, the clerk shall write the name of each one who shall be in attendance and not excused, on a separate paper or ballot, and place the same in a box to be kept for that purpose, in the manner prescribed in the ninth section of this act, and juries for the trial of cases shall be selected therefrom by lot.

How juries for the trial of cases selected.

"20. If any person duly summoned to attend as a juror in any court shall neglect to attend, without any sufficient excuse, he shall pay a fine, not exceeding twenty dollars, which shall be imposed by the court.

Fine for non-attendance

"21. If, in the opinion of any court, a lesser number of jurors than thirty will suffice for the convenient dispatch of the business thereof, it shall be the duty of such court to enter such opinion of record, expressing therein the number of jurors proper to be summoned; and thereafter, until otherwise directed, the venire facias shall not require a greater number to be summoned to attend such court.

Court may direct a lesser number of jurors to be summoned.

"22. Any court, when not incompatible with the proper dispatch of its business, shall have power to discharge persons summoned as jurors therein, or dispense with their attendance on any day of its sitting.

How jurors may be discharged.

Qualification and disqualification of jurors: when excepted to.

"23. The court shall, on motion of either party in any suit, examine on oath any person who is called

When juror to be examined by court as to his qualification.

as a juror therein, to know whether he is a qualified juror, or is related to either party, or has any interest in the cause, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that such person is not a qualified juror, or does not stand indifferent in the cause, another shall be called and placed in his stead for the trial of that cause. And in every case the plaintiff and defendant may each challenge four jurors peremptorily.

Each party to have four peremptory challenges.

"24. No exception shall be allowed against a juror after he is sworn upon the jury, on account of his age or other legal disability, unless by leave of court.

No exception allowed to juror after he is sworn in.

"25. No irregularity in any writ of venire facias, or in the drawing, summoning or impannelling of jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity, or unless the objection was made before the swearing of the jury.

When irregularity to writ, or in drawing, summoning, &c., not sufficient to set aside verdict.

Officers fined for neglect of duty.

"26. When by neglect of any of the duties required in this act to be performed by any of the officers or persons herein mentioned, the jurors to be returned shall not be duly drawn and summoned to attend the court, any person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the court.

Officers fined for neglect of duty.

Special juries.

"27. Any court may allow a special jury in any case to be formed in the following manner, viz: The court shall direct the sheriff to form a panel of twenty qualified jurors, whom he shall summon, and who are free from just cause of exception, from which sixteen shall be chosen by lot; the parties thereupon beginning with the plaintiff's attorney, or the prose-

Special juries; how formed.

cuting attorney when the state is a party, shall alternately strike off one, until the number be reduced to twelve; which number shall compose the jury for the trial of the case.

Pay of jurors.

"28. Every person who shall serve upon a grand jury shall be entitled to receive one dollar and fifty cents for each day he may so serve, and the same mileage allowed to witnesses, to be paid out of the county treasury; but he shall not in any case receive more than three dollars, exclusive of mileage, for services rendered at one term of the court.

Pay and mileage of grand jurors.

"29. Any person summoned as aforesaid by virtue of a venire facias, or otherwise, and actually attending upon the court, or attending the court house at the time summoned, whether he be called to serve on a jury or not, shall for each day he so attends, be entitled to receive one dollar and fifty cents, and the same mileage allowed to witnesses, to be paid out of the county treasury: Provided, that for any day that any person shall be sworn to serve on a case of felony, he shall for that day be paid two dollars out of the state treasury. There shall be taxed in the costs against any person against whom a payment on the verdict of a jury may be rendered in a case of misdemeanor, and against any person against whom payment on the verdict of a jury may be rendered in a civil action, and against any person on whose motion the verdict of a jury is set aside and a new trial granted, six dollars for jury costs, which, when collected from the party, shall be paid into the county treasury. All moneys so received by the clerk shall be forthwith paid by him to the sheriff, and the clerk and his sureties shall be liable therefor on his official bond, as for other moneys coming into his hands by virtue of his office. The clerk of the circuit and county court of each county shall annually certify to

Pay of jurors for attendance without serving.

Pay in cases of felony.

What jury costs taxed.

Moneys so received to be paid to the sheriff.

Liability of clerk.

Clerk of circuit and county court of each county to certify annually to county court all moneys so paid to him; also, list of cases in which jury fees have been taxed, and at the time due.

Sheriff to account in his annual settlement for all such moneys collected by him.

Juror departing without leave not entitled to pay.

Clerk to make entry of amount due each juror by state and by county.

Clerk to send certified copies of all orders making allowance payable out of state treasury.

Clerk to give to each juror certified copy of order of allowance.

Sheriff to pay amount.

How reimbursed.

How proceeded against for failure.

the county court a list of all moneys so paid to him and by him paid to the sheriff, and in addition thereto a correct list of all cases in which jury fees have been taxed, and are at the time properly due and payable into the county treasury; and the sheriff of the county shall be held to account in his annual settlement for all such moneys collected by him.

“30. No juror who shall depart without leave of the court, or being summoned as a witness for the state, shall charge for his attendance as such, shall be entitled to receive any compensation for his services as a juror.

“31. The clerk of any court upon which juries are in attendance shall, before the final adjournment at each term, and under the direction of the court, make an entry upon its minutes, stating separately the amount which each juror is entitled to receive out of the state treasury, or out of the county treasury, for his services or attendance during the term. It shall be the duty of such clerk, as soon as practicable after adjournment of the court, to transmit to the auditor certified copies of all orders under this section, making allowances payable out of the state treasury.

“32. It shall be the duty of such clerk, as soon as practicable after the adjournment of the court, to deliver to each juror a certified copy of any order under the preceding section making an allowance to him, payable out of the state treasury or out of the county treasury; and the sheriff of such county shall, upon demand, pay to such juror the amount allowed him, which shall be repaid to the sheriff out of the state treasury, or out of the county treasury, upon the production of satisfactory proof that the same has actually been paid by him. If any sheriff fail to pay any such allowance as required by law, he may be proceeded against as for a contempt of court.

Penalty for fraud on jury box.

33. If any person shall be guilty of any fraud Penalty for fraud on jury box. either by practicing on the jury box previously to a draft, or in drawing a juror, or in returning into the jury box the name of any person which has lawfully been drawn out, and drawing and substituting another instead, or in any other way in the drawing of jurors, he shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars.

Trial of case in which juror is interested at same term disqualifies him.

34. No person shall serve as a juror, except in No person to be juror in civil cases at term at which he has a case to be tried. trials for felony, at any term of a court during which he has any matter-of-fact to be tried by a jury, which shall have been, or is expected to be, tried during the same term.

Trial by jury may be waived, or the number reduced by consent.

35. In any case, except a case of felony, in which a trial by jury would be otherwise proper, the parties, or their counsel by consent entered of record, may waive the right to have a jury, and thereupon the whole matter of law and fact may be heard and determined, and judgment given by the court; or by like consent, the jury may consist of seven, and in that case a verdict shall be as valid, and have the same effect as if it had been found by a jury of twelve. Trial by jury may be waived, or the number reduced by consent.

Views.

36. The jury may, in any case, at the request of either party, be taken to view the premises or place in question or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision: Provided, The party making the mo- Views by jury.

Party requesting to advance a sum sufficient to defray expenses.

How afterwards taxed.

tion shall advance a sum sufficient to defray the expenses of the jury and the officers who attend them in taking the view, which expenses shall be afterwards taxed like other legal costs.

Conduct of jurors and sheriff.

Juror to disclose in open court anything he may know as to the matter in issue.

Duty of court.

37. A juror knowing anything relative to a fact in issue shall disclose the same in open court, but not to the jury out of court; and the court shall inform the jury of this provision.

Duty of sheriff after jury has been impaneled.

38. After a jury has been impaneled, no sheriff or other officer shall converse with, or permit any one else to converse with a juror, unless by leave of the court.

The jury lists now in custody of clerks of circuit courts to be delivered to clerks of county courts, and to constitute the jury lists until new lists are prepared.

39. The jury list prepared by the several boards of supervisors of this state for the year 1872, and now in the custody of the clerk of the circuit court of of the several counties, shall immediately upon the passage of this act be delivered by said clerks to the clerk of the county court of their respective counties, which said list shall constitute and be the jury list for said county until a new list shall be prepared in pursuance of the provisions of this act.

Acts repealed.

40. All acts or parts of acts inconsistent with this act, or amendatory to chapter one hundred and sixteen of the code of West Virginia, are hereby repealed.

Commencement.

41. This act shall be in force and take effect from and after its passage.

CHAPTER XLVIII.

AN ACT fixing the times for holding the courts for the first judicial circuit.

Approved March 13, 1873.

Be it enacted by the Legislature of West Virginia :

First judicial circuit

Days for holding courts in

1. That the days for holding the circuit courts in the first judicial circuit, for each term, shall be as follows :

For the county of Hancock, on the first Monday ^{Hancock.} of March and the second Monday of September.

For the county of Brooke, on the second Monday ^{Brooke.} of March and the fourth Monday of September.

For the county of Marshall, on the third Monday ^{Marshall.} of March and the third Monday of October.

For the county of Ohio, on the first Monday of ^{Ohio.} May and the first Monday of November.

2. All acts and parts of acts inconsistent with the ^{Acts repealed.} provisions of this act, are hereby repealed.

CHAPTER XLIX.

AN ACT to amend and re-enact sections one and six of chapter one hundred and fifty-seven of the code, concerning grand juries.

Approved March 13, 1873.

Be it enacted by the Legislature of West Virginia:

1. That section first of chapter one hundred and ^{amended re} ^{ch. 203.} ^{Section amended.} fifty-seven of the code be amended and re-enacted, so as to read, as follows :

"1. That there shall be a grand jury at each regular ^{Grand juries for} ^{the several courts.} term of a circuit court and of two of the terms of the county courts, which shall be held for the trial of causes, to be fixed by the said county courts, and entered upon their minutes ; and it shall be lawful for any circuit court, at a special or adjourned term thereof, whenever it shall deem it proper to do so, to order a grand jury to be summoned to consider any offenses against the laws, whether the same shall have been committed before the next preceding term of the court or not, and whether the accused shall have been held for trial or not prior to the next preceding regular term."

Section amended.

2. That section six of said chapter be amended and re-enacted, so as to read:

To be charged by judge in circuit court; by prosecuting attorney in county court.

"2. The grand jury after being sworn, if in a circuit court, shall be charged by the judge, and if in a county court, by the prosecuting attorney, and shall then be sent to their room.

CHAPTER L.

AN ACT to prevent prize fighting and prescribing the punishment therefor.

Approved March 15, 1873.

Be it enacted by the Legislature of West Virginia:

Penalty for fighting a prize fight.

1. That if any person fight a prize fight in this state, or act as second to any person so fighting, each and every such person shall be deemed guilty of a felony, and upon conviction thereof, be confined in the penitentiary not less than two nor more than ten years.

Commencement.

2. This act shall be in force from its passage.

CHAPTER LI.

AN ACT amending and re-enacting an act entitled "An act regulating and fixing the fees of officers," approved December 20, 1872.

Approved March 21, 1873.

Be it enacted by the Legislature of West Virginia:

Act amended.

That an act entitled "An act regulating and fixing the fees of officers," approved December 20, 1872, be amended and re-enacted, so as to read, as follows:

Secretary of state; fees of.

"1. The secretary of state may charge for services rendered in his office the following fees, to be paid

by the person for whom the service is rendered at the time it is done :

For a testimonial, one dollar and fifty cents.

For a copy of any paper, if one sheet, one dollar, and for each sheet after the first, seventy-five cents.

For issuing a commission to a commissioner in any other state, five dollars.

For issuing a commission to each notary public, two dollars and fifty cents: Provided, no fee shall be allowed for issuing a commission to any public officer other than those specified in this section. These fees shall be paid by the person for whom the service is rendered at the time it is done-

"2. Each of the officers hereinafter mentioned may, for services performed by virtue of his office, charge the following fees, to-wit:

A surveyor.

For all surveying actually done, (unless by special Fees of. contract,) for the first hundred poles or any less distance, long measure, per pole, one cent.

After the first hundred poles, long measure, per pole, half cent.

For tracing and examining old surveys to ascertain the true bearing of lines, their distances and courses, or, for doing surveying in and about any mines, cities, towns and villages, the surveyor may charge three dollars for every day necessarily so employed, in lieu of charging by the pole: Provided, That nothing in this section shall prevent any party having surveying done making a contract for a different compensation.

For calculating the quantity of less than six courses or lines, fifty cents.

When land is divided, for calculating each division of less than six courses, fifty cents.

For every course or line of more than six, three cents.

For making a plat of six courses or less, fifty cents.

For every course more than six, three cents.

For recording a plat and certificate of not more than six courses, fifty cents.

For every course above six, three cents.

For a copy of plat and certificate, where there are not more than six courses, fifty cents.

For every course above six, three cents.

For a copy of an entry, fifty cents.

For every search, where no copy is required, twenty-five cents.

For giving a receipt for any paper, fifteen cents.

For traveling to the place of surveying and returning, per mile, five cents.

**Mileage; how
apportioned.**

If surveying be done at different places on the same tour, the mileage shall be apportioned among the different surveys according to their distance from the residence of the surveyor or deputy, and each other, so that the surveyor shall not receive more than five cents a mile for going and returning for any one trip.

A Notary Public.

Fees of.

"3. When there is a protest by him, for the record thereof, making out instrument of protest under his official seal, and notice of dishonor to one person besides the maker of a note or acceptor of a bill, one dollar.

For every additional notice, ten cents.

For taking and certifying the acknowledgment of a deed or writing, twenty-five cents.

For certifying the privy examination and acknowledgment of a married woman to a deed, twenty-five cents.

For administering and certifying an oath, unless it be the affidavit of a witness, twenty-five cents.

For taking and certifying affidavits or depositions of witnesses, when done in an hour, seventy-five cents.

If not done in an hour, for any additional time, at the rate per hour of seventy-five cents.

For other services, the same fees as the clerk of the county court for like services.

Commissioners in courts.

"4. For any service such fees as the court of which Fees of. he is commissioner may from time to time prescribe, not exceeding seventy-five cents where less than an hour is employed, and if more than an hour be employed, not exceeding the rate of seventy-five cents for each hour. A commissioner returning a report shall annex thereto a certificate, under oath, that he was actually and necessarily employed for a number of hours, to be stated therein, in performing the services for which the fees stated at the foot thereof are charged. Until such certificate is made no bill shall be made out for such fees. A commissioner shall not be compelled to make out or return a report until his fees therefor be paid, or security given him to pay so much as may be adjudged right by the court to which the report is to be returned, or if it be a circuit court, by the judge thereof in vacation, unless the court or judge see cause to order it to be made out and returned without such payment or security, and shall so order.

Must annex certificate to report, showing time employed.

Right to require payment of fees, security therefor, unless court order otherwise.

Clerk of the county court.

"5. When a writing is admitted to record under Fees of. chapter seventy-three of the code, for everything relating to it, except the recording in the deed book, to-wit:

For receiving proof or acknowledgment, entering orders, writing on it clerk's certificate, statement of deeds in list entered in order book, posting same, and embracing it in list for assessor, and indexing in general index, fifty cents.

For recording a plat of not more than six courses, or for a copy thereof, fifty cents.

For every course above six, three cents.

For recording in the deed book such writing, and all matter therewith, (except plats,) or for recording anything not otherwise provided, for every thirty words, three cents.

In lieu of the said allowance of three cents for every thirty words, the clerk may, for recording in the deed book, elect to charge the following specified fees, to-wit:

Where the writing is a deed of trust or mortgage, or is a conveyance of real and personal estate, or of real estate only, seventy-five cents.

And where it is not such, fifty cents.

For recording, indexing and noting release of lien, fifty cents.

For swearing the witnesses, and entering in the order or minute book all orders in relation to the proof of a will which is admitted to record without contest, and copying such order on the will or on a paper annexed thereto, seventy-five cents.

For recording a will and the matter recorded therewith in the will book, at the option of the clerk, three cents for every thirty words, or a specific fee of fifty cents.

For entering orders and transmitting papers in case of an appeal, seventy-five cents.

If there be an order committing a decedent's estate to an officer, for entering and copying such order and the orders of appraisement, fifty cents.

If any personal representative or guardian qualify, for administering necessary oaths, making out bond, entering and copying on the will order granting probate or administration, making out copy of such order for personal representative or guardian, entering and copying orders of appraisement, one dollar.

If several personal representatives qualify on the same estate at the same time or term, only the same fee shall be charged as if one had qualified, to-wit, one dollar.

For entering and copying an order granting a license to keep a hotel or tavern where spirituous liquors are not sold, one dollar.

For entering and copying an order granting a license to keep a hotel or tavern where spirituous liquors are sold, administering oath and taking bond, two dollars.

On application for a marriage license, for administering and writing certificate of oath, issuing and registering license, and recording and giving receipt for certificate of marriage, one dollar.

For a search for anything in his office over a year's standing, except where the clerk, at the request of counsel, searches for papers in a pending cause, twenty-five cents.

For recording a certificate, and posting a copy thereof under the second section of chapter sixty-one of the code, fifty cents.

For making out an injunction bond, administering all necessary oaths, writing proper affidavits, making out release of errors, copying same, and endorsing on the summons that such bond and release are filed, one dollar.

For making out any other bond, administering all necessary oaths, and writing proper affidavits, fifty cents.

For issuing a writ in the nature of an ad quod damnum, one dollar and twenty-five cents.

On receiving the copy of a caveat, for entering such copy, twenty-five cents.

For issuing a summons to answer a bill, with an endorsement thereon. of an injunction, or of an order of attachment and recording return of same, seventy-five cents.

For issuing any other summons or any writ not particularly provided for, and for recording the return where proper to do so, fifty cents.

For each copy of any process which goes out of the office (with such process) to be used in serving it, ten cents.

For noting in process book any decree, order or process, (except a summons for a witness,) and making a receipt therefor, twenty-five cents.

For every affidavit, order of publication, copy, posting, certificate and affidavit of posting, one dollar.

For postage paid by the clerk on any decree, order or process, double the amount of such postage.

† For entering in any suit or on a motion for judgment for money all the attorneys for each party, or the appearance in proper person of a party having no attorney, who so appears, to be charged but once, ten cents.

For indorsing and filing each petition, declaration, bill, answer or other written pleading, each bill of exceptions, demurrer to evidence, special verdict, or case agreed, each written notice of the defense relied on in ejectment, or of a motion for judgment for money, and each report of a commissioner, and for entering each plea, replication or other pleading, which is not written, fifteen cents.

For indorsing and filing all the depositions and affidavits of witnesses, filed on the same side at any one time, or all written interrogatories at one time, from one party to another, or all the answers filed at one time to such interrogatories, or the exceptions filed at one time, by either party, to a commissioner's report, twenty cents.

If papers be filed on the side of the plaintiffs for which no particular fee is allowed, a fee (not for each but for the whole) of twenty-five cents.

So also if papers be filed on the side of the defendants, for which no particular fee is allowed, a fee (not for each but for the whole) of twenty-five cents

For issuing an attachment, with a copy of the rule or order for the same, (if sent out therewith,) and recording the return thereof where proper to do so, fifty cents.

For issuing a scire facias, and recording the return thereof, fifty cents.

For all the rules entered in any case on the same side, at the rules for one month, when any thing is done on such side at said rules besides entering or filing a pleading or continuing the case, fifty cents.

When no proceedings are had in any case during any rules, except to continue it, the fee shall be at the rate of twenty-five cents for every quarter of a year the case is so continued, and no more.

For docketing any suit, or any motion for judgment for money, twenty cents, to be charged but once, except that when any case is on the court docket, if at any term there be no decision or continuance entered therein, there shall be a fee for putting it on the docket at the next term, of twenty-five cents.

Where a jury is impaneled, for swearing the jury and witnesses, seventy-five cents.

Where no jury is impaneled, if witnesses be examined by the court, for swearing such witnesses for either party, twenty-five cents.

Where a witness claims for his attendance, for administering an oath to him and certifying such attendance, thirty cents.

For administering any oath not before provided for, and writing a certificate thereof where the case requires one, fifteen cents.

For all judgments, decrees, orders and proceedings, (except entries of pleadings and matters otherwise provided for,) at the election of the clerk, three cents for every thirty words actually written on the order book, or a specific fee of forty cents.

For docketing, under chapter one hundred and thirty-nine of the code, a judgment, decree, bond or recognizance, thirty-five cents.

For taxing costs in any case, on one side, twenty cents.

And if the case has been pending more than one year, then for every additional year ten cents.

For filing a transcript of a judgment of a justice, twenty-five cents.

For issuing an execution, the entry in the execution book and the record of the return, fifty cents.

For making out a transcript of the record and proceedings in any case in due form, so that the same may be used in an appellate court, for every thirty words three cents; and for making out—in any other manner than copying, any paper to go out of the office which is not otherwise provided for, the same; or in lieu thereof, if the clerk elect, a specific fee of fifty cents.

For any copy, if it be not otherwise provided for, three cents for every thirty words; or in lieu thereof, if the clerk elect, a specific fee of thirty-five cents.

For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, and writing certificate for president of the court, or judge, if the clerk be required to do so, fifty cents.

The clerks of county courts shall have the same fees in chancery cases as the clerks of the circuit court for similar services.

Fees in chancery cases.

A Clerk of the Circuit Court.

Fees of.

6. For a writ of supersedeas, or other writ not used in a county court, fifty cents.

For making the bond upon issuing such writ, administering oaths and taking proper affidavits, fifty cents.

Upon any such writ, for indorsing and filing the petition therefor, or when the writ is returned, for filing it with the return thereof fifteen cents.

When the clerk of the court of appeals issues process or an appeal, writ of error or supersedeas, for making the bond, administering necessary oaths, and writing proper affidavits, and indorsing on the process a certificate of the execution of the bond, and of the names of the sureties therein, one dollar.

For docketing any case, a fee of twenty cents, or if the clerk elect, in lieu thereof three cents for every thirty words entered on the rule book, when it is first docketed; this fee for docketing to be charged but once, except that when any case, either at law or in equity, is on the court docket, if at any term it be left undecided, without an order of continuance, there shall be a fee for putting it on the docket at the next term, of twenty-five cents.

For all judgments, decrees, orders and proceedings, (except entries of pleadings and matters otherwise provided for,) which are entered on the same day for the same persons, at the election of the clerk, three cents for every thirty words, (actually written in the order book, or upon the rule book when final judgments are entered thereon,) or a specific fee of fifty cents.

After a decision by the circuit court or court of appeals as an appellate court, for issuing an execution, making entry thereof in the execution books, and recording return, seventy-five cents.

Unless the decision be by the court of appeals in a case wherein the first judgment or decree was in a county or municipal court, in which case the fee shall be one dollar.

For taxing the damages to which a party may be entitled by reason of an injunction, appeal, writ of error or supersedeas, fifty cents.

For all other services not herein provided, the same fees as the clerk of the county court for similar services.

In chancery cases.

Fees of clerk of
circuit court in
chancery cases.

For issuing an attachment or a summons, with an indorsement thereon of an injunction or order of attachment, and recording return of same, seventy-five cents.

For every affidavit, order of publication, copy, posting, certificate and affidavit of posting, one dollar.

For process for which no other fee is allowed, twenty-five cents.

If, when a bill or answer is filed, there be filed at the same time any exhibit on which the clerk indorses the name of the case and the day it is filed, for every such exhibit ten cents.

When more than three exhibits are returned with a commissioner's report, (but not annexed thereto) for indorsing and filing such exhibits, a fee, not for each but for all filed with the same report, of twenty-five cents.

If papers be filed on the side of the plaintiffs for which no fee is before provided, a fee (not for each but for the whole of such papers) of twenty-five cents.

And if papers be filed on the side of the defendants for which no fee is before provided, a fee (not for each but for the whole of such papers) of twenty-five cents.

For entering in the rule book the return of all process returnable the same day, a fee, not for each defendant named therein, nor for every process, but for the whole of the defendants named in all such process, of fifty cents.

For all the rules entered in any case on the same side, at the rules for one month, when anything is done on such side at said rules besides entering or filing a pleading on continuing the case, fifty cents.

For any execution, the entry of the case in the execution book and the record of the return, unless a higher fee be allowed therefor, fifty cents.

For all other services not herein provided for, the

same fees as a clerk of the county court for similar services.

Clerks of courts of limited jurisdiction.

7. The clerks of courts of limited jurisdiction created ^{Fees of.} in incorporated towns or cities shall have the same fees for their services as clerks of the circuit courts for similar services.

Clerk of the Court of Appeals.

8. For filing the record upon an appeal, one dollar. ^{Fees of.}
For docketing an appeal, to be charged but once, one dollar.

For entering judgment on an appeal, for every thirty words, three cents, or the clerk may charge a specific fee of one dollar and fifty cents.

For all other services not herein provided for, the clerk shall have the same fees as the clerk of a circuit court for similar services.

Sheriffs.

9. For serving on any person a declaration in eject- ^{Fees of.} ment or an order, notice, summons or other process where the body is not taken, and making return thereof, seventy-five cents.

Except that the fee for summoning a witness shall be twenty-five cents.

For serving on any person an attachment or other process under which the levy is taken, one dollar.

For carrying a prisoner to or from jail, for each mile of necessary travel either in going or returning, five cents.

For taking any bond or undertaking, sixty cents.

When a jury is sworn in court, for summoning and impanneling such jury, one dollar.

Where a jury is summoned upon a writ of ad quod damnum, or any inquest in vacation, for summoning

it, one dollar, and for attending at the place of its meeting, one dollar, and, in addition, if the jury attend there, and an inquisition be found and returned, two dollars.

For serving a writ of possession, one dollar and fifty cents.

For serving a writ of distringas on a judgment or decree for personal property, if the specific thing be taken, one dollar and fifty cents.

For keeping and supporting any live stock distrained or levied on as follows:

For a horse or mule, if well fed on grain and hay, or fodder, thirty-five cents per day; but if the same be kept on pasture, twelve cents per day, or such other sum, in either case, as the county court may from time to time prescribe. But if a mare so levied on and kept have a suckling colt, no fee shall be allowed for keeping the colt.

For a hog, five cents per day.

For each head of cattle, five cents per day.

For sheep and goats, each, three cents per day.

Necessary expenses
for keeping or re-
moving property
not before men-
tioned, to be repaid.

The officer shall be repaid any necessary expense incurred by him in keeping property not before mentioned, or in removing any property; and when, after distraining or levying, he neither sells nor receives payment, and either takes no bond or undertaking, or takes one which is not forfeited, he shall, if no default, have (in addition to the sixty cents for a bond or undertaking, if one was taken,) a fee of three dollars, unless this be more than half of what his commission would have amounted to if he had received payment; in which case, he shall (whether a bond or undertaking was taken or not) have a fee of sixty cents at the least, and so much more as is necessary to make the said half.

Commission when
there is neither
sale, nor payment,
nor undertaking.

Commission upon
an undertaking.

The commission to be included in a bond or undertaking (when one is taken) shall be five per centum on the first three hundred dollars of the

money for which the distress or levy is, and two per centum on the residue of said money; but such commission shall not be received unless the bond or undertaking be forfeited, or the amount (including the commission) to be paid to the plaintiff.

An officer receiving payment, in money, or selling property, shall have the like commission of five per centum on the first three hundred dollars of the money paid or proceeding from such sale, and two per centum on the residue, except that when such payment or sale is on an execution or a bond or undertaking, his commission shall be only half what it would be if the execution were not on such bond or undertaking.

For receiving payment or selling property.

Every sheriff or collector shall be allowed for the collection of state taxes a commission upon the amount chargeable to him, as follows:

Commission for collecting state taxes.

Upon the first ten thousand dollars, or fractional part thereof, seven and one-half per centum; upon the second ten thousand dollars, or fractional part thereof, five per centum; for the third ten thousand dollars, three per centum, and all sums in excess of this amount two per centum; and should any sheriff or collector fail to pay into the state or county treasury the taxes within the time required by law, he shall forfeit one-fifth of his commissions; but he shall in no case pay into the state treasury the taxes levied by any tribunal within the county, but shall hold the same subject to the order of the proper authority.

Penalty for failure to pay taxes into state treasury within the time prescribed by law.

For collecting the county levy, the same commissions, under the same restrictions, shall be allowed as for collecting the state taxes.

Commission for collecting county levy

For collecting and disbursing the county school tax, a commission of three per centum.

For collecting and disbursing school tax.

But no commission shall be allowed upon taxes returned delinquent or for disbursing any state or county tax. If the sheriff or collector pay any taxes

To receive no commission upon taxes returned delinquent or disbursing any tax.

Remedy, where he
pays taxes before
collection thereof.

into the treasury before he has collected the same, he shall nevertheless have the same remedy for collection thereof, by distress or otherwise, as if the same had not been paid to the state.

Presidents of the county courts and justices of the peace.

Per diem of presi-
dents of county
courts and justices.

10. Presidents of the county courts shall receive four and justices of the peace three dollars per day for every day they serve in court, to be paid out of the county treasury.

For other services performed by presidents of the county courts, they shall receive the same fees as justices for like services.

Justices shall have specific fees in each case, as follows :

For issuing a summons or warrant, provided there is no trial, fifty cents.

Where there is a trial and no appearance, seventy-five cents.

Where there is a trial and defense is made, one dollar.

Where there is an appeal from his judgment, one dollar and fifty cents.

For issuing a subpoena for a witness, twenty cents ; and where a case is removed to the county court without trial, a fee of fifty cents only shall be charged.

For his services in all cases of misdemeanor, one dollar.

For taking and certifying the acknowledgment of any deed or writing, twenty-five cents.

For certifying the privy examinations and acknowledgment of a married woman to a deed, twenty-five cents.

For taking depositions of witnesses, if done in an hour, seventy-five cents.

If not done in an hour, for any additional time, at the rate per hour of seventy-five cents.

For certifying proof of account or claim against the estate of a testator or intestate, twenty cents.

Specific fees of
justices.

*amended to
1911 p. 129.*

For the examination of a lunatic, three dollars.

For the examination of a case of felony, two dollars.

For taking an inquest on a dead body, to be audited and paid from the county treasury, five dollars.

For other services the same fees as the clerk of the county court for like services."

Constables.

11. For removing a person by virtue of a warrant Fees of. issued under the thirteenth section of chapter forty-six of the code, to be charged to the county, five cents for each mile of necessary travel, going and returning.

For service and return of summons to commence a suit, and for every additional summons, forty cents.

For serving and returning orders of attachment, twenty-five cents for each garnishee summoned, and one dollar for taking property, including inventory and appraisement, besides the reasonable expenses of removing, securing and keeping the property attached.

For subpoena, for each person served therewith, twenty-five cents.

For levying execution, fifty cents.

For posting notice of sales, twenty-five cents.

For all money collected without process, five per centum, to be paid by the party for whom collection is made.

For summoning a jury and witnesses for inquest on a dead body, to be audited and paid from the treasury of the county, three dollars.

For services not otherwise provided for, the same fees as sheriff for similar cases.

Fees of jailors in both civil and criminal cases.

12. For receiving a person in jail, twenty-five cents, Fees of. and the like sum for discharging him therefrom.

For keeping and supporting a person confined in jail for each day, fifty cents.

Upon the affidavit of the jailor the county court shall allow him out of the county treasury the amount actually paid for fuel necessary in heating in the jail.

Salary of jailor.

For attendance upon the circuit and county courts and acting as janitor of the court house, not to exceed one hundred dollars per annum, to be ascertained and fixed by the county court and paid out of the county treasury.

How fees are charged and fee bills made out.

Fees; to whom chargeable.

13. The fees mentioned in this act shall be chargeable to the party at whose instance the service is performed; except the fees for entering and certifying the attendance of witnesses and proceedings to compel payment for such attendance, shall be charged to the party for whom the witness attended, and except also, as follows :

What service clerk is not to charge for.

No clerk shall charge for taking bond from, administering oaths to, or copying orders as to the appointment or qualification of any county, school or district officer, or for filing the bonds or oaths of any such officer, nor for making or copying orders as to county levies or grand juries and administering the necessary oaths.

What not to be charged for by sheriff.

No sheriff shall charge for serving such or any other public orders, nor for summoning and impanelling grand juries.

Services rendered for state not paid for out of treasury.

No clerk or sheriff shall receive payment out of the treasury for any service rendered in cases of the state, except where it is allowed hereinafter, or by some other act.

Fee books; by what officers kept; what entered therein.

14. Every clerk of a court shall keep a fee book, wherein shall be entered the fees for every service performed by him, and the fact of such fees being paid, or of a bill being made out therefor, whichever shall happen first.

To whom submitted.

The fee books of a clerk shall be submitted to the

inspection of commissioners appointed to examine the clerk's office.

15. No person shall be compelled to pay any fees before mentioned, until there be produced to him a fee bill signed by the officer to whom the fees are due, expressing the particulars for which such fees are charged.

How and when fee bills made out and by whom signed.

Must be produced to compel payment.

And no such fee bill shall be made out for any service not previously performed, unless a person desire to pay before such performance, in which case there shall be mentioned in such fee bill the nature of the service, and the fact that it is to be performed. Nor shall an officer, for any service, make out a fee bill for more than is allowed therefor. Nor shall he, for the same service, attempt to obtain payment a second time; nor ever make out a fee bill a second time, unless he indorse the fact and swear that the former bill remains unpaid. For each item in which an officer shall violate this section, he shall forfeit five dollars to any person prosecuting therefor, and the county or circuit court of the county in which an officer resides, may, on motion, after reasonable notice to him, quash any fee bill made out by him contrary to law.

If made out second time, what fact must be indorsed thereon and sworn to.

Penalty for illegal demands.

But any officer may demand his fees in advance for any particular service required to be performed by him, and if such fees be not paid or secured to him, the officer may refuse to perform the service until they are paid or secured. In such cases the fee bill shall state the nature of the service, and that it is to be performed.

May demand fees in advance.

If fees be not paid or secured, may refuse to perform the service.

What fee bill must show in such cases.

How bills are made out for fees due a deceased clerk.

16. When a clerk dies, his successor shall charge in the fee books of the clerk's office such lawful fees as do not appear to have been charged therein, for services performed by the decedent, and make out fee bills for such fees, and also for any fees charged

How and by whom fee bills made out for fees due dec'd clerk.

on the said books by the decedent for which he does not appear to have made out fee bills in his lifetime; except that such of those as appear to said successor, to be for more than is allowed by law, shall be reduced by him so far as in his judgement is necessary to make them legal.

What they must show on their face; by whom signed and to whom delivered.

Service for making them out; how paid.

17. The fee bills made out under the preceding section shall show on their face that they are for fees due the decedent, and shall be signed by his successor, and delivered to the personal representative of such decedent, as soon as practicable. Such successor shall receive for his services, under this and the preceding section, such compensation as the court, whereof he is clerk, shall adjudge to be reasonable, which shall be paid by said personal representative, or by the officer who may collect said fee bills, out of the first proceeds of said collection.

How fee bills are collected and accounted for.

When and to whom fee bills are delivered for collection; power and duty of collecting officer.

18. Any officer mentioned in this chapter, or the personal representative of a deceased clerk may, on or before the first day of July in any year, deliver fee bills, duly signed, to any sheriff or collector of the public taxes, who shall receive and endeavor to collect the same. A sheriff or collector may distrain therefor, or for any fee bills due himself, such property of the person to whom the fees are charged as might be levied on under a writ of fieri facias against him, except as hereinafter mentioned, and the twelfth, thirteenth and fourteenth sections of chapter thirty of the code shall apply to such fee bills in like manner as to taxes.

When and how sheriff or collector accounts for fee bills collected, and returns those not collected.

19. Every sheriff or collector to whom such fee bills are so delivered, shall, on or before the first day of January next, after such delivery, account therefor with the officer or the personal representative entitled thereto, by returning such as he may not have collected, with the indorsement thereon that the per-

son so charged with the fees has no estate in his county out of which the same could be made, and by paying to such officer or representative the amount of all not so returned, deducting a commission for himself of seven and a half per centum on said amount. If he fail so to do, judgment may be obtained on motion, against said sheriff or collector, and his sureties, and his and their personal representatives, or against any deputy who may have signed the receipt for said fees, or his personal representative, for the amount with which such sheriff, collector, or deputy is chargeable, and damages thereon, not exceeding fifteen per centum per annum, from the said first day of January till payment. Such judgment may be on motion in the county or circuit court of the county in which said sheriff or collector resides, and if the fees be due to the clerk of the court of appeals, it may be in the county or circuit court of the county in which the seat of government may be.

Commission of collecting officer.

Remedy for what officer is chargeable with.

On such motion any receipt for fees mentioned in the notice as signed by any person, shall be deemed to be his signature, unless an affidavit be filed denying it, and shall be prima facie evidence of the collection of all the fees mentioned therein, not returned, as aforesaid.

What deemed prima facie evidence of collection of such fees by officer.

20. No fee shall be collected by distress or suit after five years from the end of the year in which the service was performed that is charged therein, unless, within five years before the institution of such proceeding, it was returned by an officer, with such indorsement thereon, (properly dated,) as is mentioned in the preceding section.

Within what time fee bills may be collected.

21. An officer or witness to whom, for fees or attendance, anything is due that is taxed in costs for which there is judgment or decree, may, within ten days after such judgment or decree, lodge in the clerk's office of the court wherein the same is rendered, his fee bills for such fees, or certificate for such

How officer or witness may collect fees out of costs of suits, &c.

Duty of the clerk in relation to such fees

attendance. The amount due each officer or witness, for what is so lodged, shall, and the amount due the clerk himself for fees so included, may, within the said ten days, be noted in the margin of the order or execution book, opposite the entry of the case. An officer or witness, whose fees or certificate may be so noted, shall be paid the same out of the costs, by the person against whom the judgment or decree is; and the right to such payment shall be valid against any assignee of the judgment or decree. When the clerk issues execution in such case, he shall indorse thereon how much of said costs is for each officer or witness whose fees or certificate may be so noted; and the officer collecting said costs shall pay the same accordingly, to those entitled thereto.

What must be indorsed on execution.

Collecting officer to pay to party entitled thereto.

When officer may demand his fees, or security, before performing service.

No officer mentioned in this act shall be obliged to perform services for any person, unless payment of his fees for said services be paid or secured; nor to perform services for any person against whom he has had fee bills returned, which remain unsatisfied, unless he be secured payment of his fees for the services desired, or performance of said services be directed by a court.

Fees of constables and justices in certain cases to be charged to county except when there is no conviction.

22. In all criminal cases, other than felony, search warrants and proceedings under chapter one hundred and fifty-six of the code, the fees of justices and constables shall be charged to the county, and audited and paid as other claims against the county, except, however, that if there is no conviction before the county or circuit court, then the person making the complaint before the justice shall pay said fees, and the county shall in no event, unless there is a conviction as aforesaid, be liable for or pay any such fees.

Payment to officers out of the treasury.

Fees payable out of state treasury.

23. There shall be paid out of the treasury to clerks and sheriffs, the following fees, after the same are duly certified to the auditor, viz :

To a clerk of a circuit or county court for services rendered the state in a civil case, such fees as would be chargeable for the like services to an individual. To clerks of county and circuit courts.

To a sheriff or other officer for an arrest for felony, one dollar; and for conveying any person charged with or convicted of felony, to jail, or from one jail to another or to the penitentiary, for each mile in going and returning, ten cents. To officer for arresting, removing or supporting criminal.

The officer shall also be allowed for the support of the prisoner during the removal, and for assistance to make the arrest or effect the removal, such charge as may have been necessarily incurred by him, to be shown by his own affidavit, and where he has assistance, by the affidavit also of each person employed by him; such charge for assistance not to exceed, where it is in making an arrest, one dollar per day, for each person employed to assist him, and not to exceed, where it is conveying a prisoner, ten cents per mile going and returning, for each guard, for impaneling a jury in case of felony, one dollar, and for executing a sentence of death, five dollars in addition to the expenses actually incurred by the officer in its execution. Pay for assistance, and to guards.

To a jailor, in cases of felony, the fees prescribed by section twelve. Fees of jailer in cases of felony.

Jailor's fees in cases other than felony; how paid.

24. In cases of misdemeanor, the fees of a jailor shall be charged to the county, and in civil cases to the party at whose instance or suit the prisoner is committed. Fees in other cases; how paid.

Allowances to certain officers.

25. The county court of every county shall allow annually to the county officers hereinafter mentioned, for their public services, for which no other fee or reward is allowed by law, such sums to be paid out of the county treasury, as are deemed reasonable by Payment to officers by county.

the court, within the limit ascertained by law, that is to say:

To the sheriff.

To the sheriff, not to exceed two hundred dollars, except that the sheriffs of Kanawha and Wood counties shall be allowed a sum not to exceed three hundred dollars.

To clerk of circuit court.

Special provision for clerk of circuit court for Ohio, Kanawha and Wood counties.

To the clerk of the circuit court, not to exceed two hundred dollars; except that the clerk of the circuit court of Ohio county shall be allowed annually not less than five hundred nor more than one thousand dollars, and of Kanawha and Wood counties a sum not to exceed three hundred dollars.

To clerk of county court.

Special provision for clerk county court of Wood and Kanawha.

To the clerk of the county court not to exceed two hundred dollars; except that the clerks of the county courts of Kanawha and Wood counties shall be allowed a sum not to exceed three hundred dollars.

To prosecuting attorneys.

To the prosecuting attorney not less than one hundred nor more than two hundred and fifty dollars: except as follows:

Special provisions as to prosecuting attorneys of certain counties.

The prosecuting attorney in the counties of Boone, Lincoln, Wayne, Braxton, Marion, Marshall and Wetzel, shall be allowed annually not less than one hundred, nor more than four hundred dollars.

In the counties of Brooke, Hancock, Putnam, Monroe, Monongalia, Mason, Barbour, Doddridge, Fayette, Gilmer, Mercer, Morgan, Nicolas, Preston, Raleigh, Tyler, Upsher, Taylor and Wirt, not less than two hundred nor more than four hundred dollars.

In the counties of Berkeley, Cabell, Greenbrier, Harrison, Jefferson and Ritchie, not less than two hundred and fifty nor more than five hundred dollars.

In the counties of Kanawha, Wood and Ohio, not less than five hundred nor more than one thousand dollars.

No extra compensation to be allowed.

But no extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered

on the contract made, nor shall the salary of any public officer be increased or diminished during his term of office. Salary not to be increased or diminished.

26. All acts and parts of acts inconsistent with this act are hereby repealed. Acts repealed.

27. This act shall be in force from and after its passage. Commencement.

CHAPTER LII.

AN ACT changing the name of the town of Fork Lick, in the county of Webster, to the name of Addison.

Approved March 21, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the town of Fork Lick, in the county of Webster, shall hereafter be called and known by the name of Addison. Town of Fork Lick changed to the name of Addison.

2. This act shall be in force from its passage. Commencement.

CHAPTER LIII.

AN ACT for the construction of toll bridges across the Ohio river.

Approved March 21, 1873.

Be it enacted by the Legislature of West Virginia :

1. That whenever any number of persons, not less than seven, associate themselves together for the purpose of constructing a toll bridge across the Ohio river within the limits of this state, they shall under their hands and seals, make a certificate in the clerk's office of the county court where such bridge is intended to be built, specifying the corporate name, the amount of capital stock necessary, the amount of each share, and the place where such bridge is to be built. Said certificate shall be recorded in the clerk's Authority to construct a toll bridge across the Ohio river. How company incorporated.

office before mentioned, and also, in a book of record kept by the company for that purpose. Said certificate shall be acknowledged, certified and forwarded to the secretary of state, upon which said persons shall be a body corporate by the name designated in said certificate. The articles of agreement of said company shall also be recorded in the office of the clerk of the county court in the county where such bridge is intended to be located, and when so incorporated, are hereby authorized to carry on the operations named in said certificate of incorporation and by the name and style provided in said certificate shall be deemed a body corporate, with succession, and they and their associates, successors and assigns, shall have the same general corporate powers as are provided in the third section of this act, and subject to all restrictions hereafter provided.

Corporate powers.

Books of subscription.

Directors; when and how elected.

Term of office.

What necessary to make such election valid.

Election to be annual.

Name of corporation.

Powers of corporation.

2. The incorporators herein named shall open the books of the said company for subscription to the capital stock of said bridge, and as soon thereafter as ten per centum of the capital stock shall be subscribed, they shall call a meeting of the persons who have subscribed stock as aforesaid, and shall then and there proceed to elect seven directors who shall be stockholders in said company, who shall hold their offices as such directors for one year from and after said election and until their successors are elected and qualified. To render such an election valid or any special or general election held thereafter, the presence of stockholders entitled to a majority of all the votes shall be necessary, either by person or proxy, and such election shall be annual.

3. The corporation shall be known by the name designated in the certificate of incorporation, and by that name shall have perpetual succession and a common seal; may sue and be sued, plead and be impleaded, and may make and establish such by-laws, rules and regulations for the government of said

company, and the management and conduct of its business, not contrary to the laws of this state nor the United States, as they may think proper; and may alter, change and abolish the same from time to time.

4. The directors shall have power to construct said bridge for and on behalf of the company, by purchasing the material thereof and hiring the workmen and laborers to construct and erect the same, or may contract with contractors for the construction of the same, either as an entirety or in parts, and to transact all the business of the company and appoint agents thereof under such rules and regulations as the by-laws may establish. They may require payment of the stock subscribed in such proportion and installments, at such times and upon such notice as they may deem reasonable. And if any stockholders refuse to pay any requisition so made, they may sell at public auction the share or shares on which default of payment is made, after one month's notice of the time and place of said sale, published in the newspapers of the county in which such bridge is to be located, or by hand-bills posted in at least ten public places in said county for a like period of time; and any balance due on such share or shares, which may not have been satisfied by said sale, and all costs in the proceeding may be recovered from the delinquent stockholder in the same manner as any other indebtedness.

Directors may construct bridge, or contract for the construction of same.

May require payment of stock subscribed.

May sell shares on which default of payment is made.

What notice must be given.

Should any balance be due: how recovered.

5. The stock of said company shall be deemed personal estate, and shall pass as such to the proper representative of such stock, and may be transferred, and certificates thereof issued in such manner and form as the directors shall from time to time provide and direct.

Stock deemed personal property, and transferable.

6. The said company shall have power to acquire and hold any ferry rights within one and a half miles of said bridge, and any amount of ground by pur-

Power of company to acquire and hold ferry rights.

To purchase land for necessary purposes, and sell portions of same.

If company cannot agree with land-owners, what proceeding may be had.

Only five acres can be acquired.

Company to stand seized in fee simple to the ground condemned.

Rates of toll.

Penalty for demanding and receiving greater tolls

chase they may deem necessary, in order to procure a suitable site for such bridge, toll-houses or other purposes, and may sell such portions of the same as they may deem proper; and if the company shall not be able to agree with the owner or owners of said land for the acquisition thereof, they may proceed in the manner now provided in chapter forty-two of the code, to acquire such land to an amount not exceeding five acres, and, upon payment of the damages, if any found by the commissioners, by the said company to the owner or owners of said land, or into court when so required, the said company shall stand seized in fee simple of the ground so condemned.

7. The company, as soon as said bridge shall be completed or fit for travel, shall be authorized to demand and receive thereat a rate of toll not exceeding the following: For every person on foot, ten cents; for every person on horse back, twenty cents; loose or led horses, mules, jacks or jennies, ten cents each; for every wagon, omnibus, sleigh or other vehicle drawn by two horses or mules, forty cents; for every additional horse or mule attached thereto, ten cents; for every dray or cart with horse or mule attached, twenty-five cents; for every spring wagon, carriage, sleigh or other vehicle, drawn by one horse or mule, thirty cents; and for every person in any vehicle other than the driver, ten cents each; for every head of sheep, two cents; for every head of hogs, three cents; for every head of cattle, six cents; and in like proportion for any other vehicles or animals not enumerated in this section; and if the collectors of toll of such bridge shall demand and receive for the use of said company, from any person, greater tolls than aforesaid, the said company shall, for every such offence, forfeit and pay to the party aggrieved the tolls so demanded, and five dollars, to be recovered, with costs, before any justice of the peace in the district in which such offense was committed.

8. The said company shall have power to borrow such sums of money as they may deem necessary, for the building and keeping in repair the said bridge, toll houses, or other buildings belonging to the company, and secure the payment of the same by deed of trust on any of their property, franchises, or incomes; and if after said bridge shall have been completed, said company shall fail to keep the same in proper repair for safe passage and use, the company shall forfeit and pay the sum of ten dollars for every twenty-four hours the same shall remain out of repair, for the use of the school fund of the state: Provided, however, That such failure to keep the same in repair shall be occasioned by a want of due diligence on the part of said company or their agents, to repair said bridge.

Power of company to borrow money and secure payment of same.

Penalty for failure to keep bridge in repair.

Proviso

9. The said bridge or bridges shall be so constructed as to conform to the laws of the United States regulating bridges over the Ohio river.

How bridge to be constructed.

10. This act may be amended at any time hereafter.

Act amendable.

CHAPTER LIV.

AN ACT to amend and re-enact chapter one hundred and twenty of the code concerning the attorney general and other attorneys for the state.

Approved March 24, 1873.

Be it enacted by the Legislature of West Virginia:

1. The attorney general shall give his opinion and advice in writing whenever required to do so by the governor, or other officers at the seat of government, or by the board of public works.

Attorney General to give opinion and advice to certain officers when required.

2. He shall appear as counsel for the state in all cases in which the state is interested, depending in

When to appear as counsel for the state.

the supreme court of appeals, or in the circuit court of the county in which the seat of government may be.

shall make annual
report to governor.

3. He shall annually, on or before the first day of October, deliver to the governor a report of the state and condition of the several causes in which the state is a party, pending in the said courts.

His fees: how
paid.

4. On the final determination of any cause in either of the courts mentioned in the second section, in which the attorney general appeared for the state, the clerk thereof shall certify to the auditor the fee of the attorney general which was taxed in the bill of costs against the defendant; and in case the said fee shall be paid into the treasury, the auditor shall issue his warrant on the treasury in favor of the attorney general for the amount thereof.

Duties of prosecuting
attorneys.

5. It shall be the duty of every prosecuting attorney in this state to attend to the criminal business of the state in civil cases, when required by and under the direction of the auditor, in the circuit court and the county court of the county in which he was elected, under the direction of the court; and, when he has information of the violation of any penal law committed within the county, shall institute and prosecute all necessary and proper proceedings against the offender; and may, in such case, issue or cause to be issued, a summons for any witness he may deem material.

Commencement.

6. This act shall be in force from its passage.

CHAPTER LV.

AN ACT to legalize certain acts of the county court for the county of Fayette.

Approved March 24, 1873.

Preamble.

WHEREAS, It is represented to the legislature that the county court for the county of Fayette, in pursu-

ance of law, held its first session at the court house of said county, on Tuesday, the seventh day of January, 1873; but in consequence of high waters and other causes, a majority of the justices of said county were not and could not be present, so as to classify the justices for the performance of their duties in court; and the said justices, so assembled in court, adjourned the said court over to the twenty-first day of the said month, and ordered all the justices of the said county to be summoned to attend on that day, to classify the justices for the performance of their duties in court; and in pursuance of said order and summons, which was served upon all the justices of the county, a majority did attend at the court house of the said county on the said twenty-first day of January, and held a court and classified the said justices of said county for the performance of their duties in court; and a doubt having arisen whether the holding of said court on the said twenty-first day of January, and the classification of said justices and other acts of the said court were legal and valid;

Be it therefore enacted by the Legislature of West Virginia:

1. That the holding of said court on the said twenty-first day of January, 1873, and the classification of the justices of the said county for the performance of their duties in court, and other acts of the said court, are hereby made valid and binding.

Certain acts of county court of Fayette legalized and made binding.

2. This act shall be in force from and after its passage. Commencement.

CHAPTER LVI.

AN ACT to amend and re-enact chapter eighty-eight of the acts of the Legislature of 1871, concerning vaccine agencies.

Approved March 24, 1873.

Be it enacted by the Legislature of West Virginia:

That chapter eighty-eight of the acts of the Leg- Act amended.

islature is hereby amended and re-enacted so as to read, as follows :

Vaccine agents;
Governor to ap-
point three; their
duties.

1. The governor shall appoint three properly qualified agents residing respectively, at Charleston Kanawha county; at Martinsburg, Berkeley county, and at Wheeling, Ohio county, whose duties shall be to furnish by mail or otherwise, every citizen of this state who may apply therefor, with genuine vaccine matter and with directions how to use it, free of charge. And the medical superintendent of the West Virginia Hospital for the Insane, at Weston, shall act as agent without compensation.

Medical superinten-
dent of insane asy-
lum, at Weston, to
act as agent with-
out compensation.

Compensation of
agents appointed
by governor; how
paid, and when.

2. The sum of one hundred and fifty dollars (150) annually is hereby appropriated for the payment of such agents, fifty (50) dollars to each agent respectively; the same to be paid semi-annually on order of the governor.

Terms of office.

3. The terms of office of said agents shall be for four (4) years.

Commencement.

4. This act shall be in force from and after the fourth day of March, 1873.

CHAPTER LVII.

AN ACT to compel contribution by joint defendants.

Approved March 24, 1873.

Be it enacted by the Legislature of West Virginia :

Joint defendants in
actions ex-delicto,
if judgments be
rendered, to con-
tribute to same ex-
tent as if judg-
ments were upon
actions ex con-
tractu.

1. That whenever judgments have heretofore been, or may hereafter be rendered in actions ex delictu, against several persons jointly, and satisfaction of said judgments have been, or may be, made by any one or more of the said parties, the others shall be liable to contribution to the same extent as if the judgments were upon actions ex contractu.

CHAPTER LVIII.

AN ACT for giving full force and effect to section thirty-five of article eight of the constitution relating to citizens of the state of West Virginia, who aided or participated in the late war between the government of the United States and a part of the people thereof.

Approved March 24, 1873.

Be it enacted by the Legislature of West Virginia :

1. That no citizen of this state, who aided or participated in the late war between the government of the United States and a part of the people thereof, on either side, shall be liable in any proceeding, civil or criminal, nor shall his property be seized or sold under final process issued upon judgments or decrees heretofore rendered, or otherwise, because of any act done according to the usages of civilized warfare.

Citizens who aided or participated in the late war shall not be liable in any proceeding for acts done according to the usages of civilized warfare.

2. That in any action or suit pending, or which may hereafter be brought in any court of this state, if it shall appear by the declaration or other pleading of the plaintiff, that the act complained of was done according to the usages of civilized warfare, in the prosecution of the war between the government of the United States and a part of the people thereof; the court upon demurrer to the declaration, or other pleading of the plaintiff, shall dismiss the plaintiff's action at his costs. And if it does not so appear, the court shall admit any proper plea setting forth that the act complained of by the plaintiff in the action was done according to the usages of civilized warfare in the prosecution of said war; and if upon an issue of law, or fact, made upon the said plea, it be found for the defendant, the judgment of the court shall be in his favor.

In any action or suit pending, or hereafter brought, if it appear that the act complained of was done according to the usages of civilized warfare, court shall dismiss plaintiff's action at his costs.

3. That if it shall be alleged, by petition, under oath of the defendant or his personal representative,

When court shall suspend proceedings upon certain judgments or decrees.

How notice served.

to the court in which any judgment or decree shall have been rendered, or to any court to which such judgment or decree shall be transferred, that such judgment or decree was recovered or rendered by reason of an act done by the defendant according to the usage of civilized warfare in the prosecution of said war, a copy of which having been served on the plaintiff, his agent or attorney at law, or, if he be dead, upon his personal representative, ten days prior to filing the same, the court shall suspend proceedings upon such judgment or decree; and being satisfied of the truth of said allegation, or if it appears by the record that a plea setting forth that the matters complained of were done in accordance to the usages of civilized warfare in the prosecution of said war, was filed, or offered to be filed, by the defendant, and rejected or overruled by the court, shall set aside the judgment or decree, and award a new trial therein, which shall be governed by the provisions of this act; and in case the judgment or decree upon the new trial be in favor of the defendant, and he shall have paid the said judgment or decree in said petition set forth, or any part thereof, the court shall render a judgment or decree that the same shall be restored to the defendant with interest, and shall enforce such restitution by execution or other proper process.

When court shall set aside certain judgments or decrees, and award new trials.

If judgment or decree upon new trial be for defendant, court shall enforce restitution.

How enforced.

When court shall suspend proceedings in an action at law, or suit in equity for a reasonable time, to enable petitioner to set aside a judgment or decree.

4. If it shall appear, by petition, under oath, to the court in which any action at law or suit in equity may be pending, to enforce the payment of a judgment or decree rendered against the petitioner or his testator, or intestate, in case the party against whom the judgment or decree was had, be dead, that such judgment or decree was recovered or pronounced, for an act done by him, or by another for whose act he was held responsible, according to the usages of civilized warfare, and that the petitioner is proceeding under the provisions of this act to have the judgment

or decree set aside, the court shall suspend proceedings in said action at law, or suit in equity, for a reasonable time to enable the petitioner to have said judgment or decree set aside, and if the said judgment or decree shall be set aside, dismiss said action at law or suit in equity at the cost of the plaintiff.

If set aside, plaintiff to pay costs.

5. That upon the trial of any indictment, presentment or information, the defendant may be permitted to show that the act charged against him was done according to the usages of civilized warfare in the prosecution of said war, and if the evidence establishes the fact he shall be entitled to a verdict of acquittal, and the court, if required, shall so instruct the jury.

When defendant entitled to verdict of acquittal upon the trial of any indictment, presentment, &c.

6. In prosecutions where there has been a conviction of felony, or of a misdemeanor, the party convicted, before the court in which the conviction was had, or court to which the judgment of conviction was transferred, upon petition of the party under oath, that the act for which he was convicted was done according to the usages of civilized warfare, and being satisfied of the truth of the allegation, the court shall award to the party a new trial, to be had according to the provisions of this act.

New trials, where a person has been convicted of a felony or misdemeanor; how awarded.

7. If any defendant who has heretofore been sued for acts arising out of a participation in the late war, or for acts in confederation with others therein, in which he was sought to be rendered liable by suit, has compromised such suit or liability, under the belief that he was restrained in the justice of his defense and the equal privileges of a suitor by the constitutional and statutory disabilities imposed upon him because he had so participated in said war, and shall make oath to such belief, it shall thereupon be lawful, and the duty of the court in which such suit was instituted, to reinstate such suit on the docket of the court to be therein tried; and if upon such trial

Compromised suits, for acts growing out of the late war how reinstated.

When such compromise deemed void.

the plaintiff fail to establish his claim before a jury of twelve impartial men, according to the usages and rules of proceedings in the courts of this state, to hold that such compromise, by reason of such disabilities, was void and of no effect, and if money was paid on such compromise, to require the same to be returned; or if obligations or other contracts were executed for the payment or delivery of anything in pursuance of such compromise, to hold that such obligation or contract was, and is, void and of no effect; and in case the money on such compromise shall have been paid, the court shall, by execution or otherwise, provide for its being reclaimed and paid to the party purchasing, or his personal representative. Said cause shall be tried according to the provisions of the first section of this act, and the plaintiff shall not be authorized to dismiss his suit to avoid a trial unless the defendant shall consent thereto; and the same shall be conducted in the same manner as provided for in other cases mentioned in this act.

Money paid on such compromise to be returned; or obligations or other contracts executed for payment, in pursuance of such compromise to be held void and of no effect.

How money paid on such compromise reclaimed.

How cause tried.

Plaintiff cannot dismiss suit unless defendant consent.

Commencement.

8. This act shall be in force from its passage.

CHAPTER LIX.

AN ACT to amend an act passed March 4, 1868, entitled "An act amending section one of chapter sixty-eight of the acts of 1866."

Approved March 24, 1873.

Be it enacted by the Legislature of West Virginia :

Act amended.

That chapter one hundred and forty-three of the acts of the legislature of West Virginia of 1868, is hereby amended and re-enacted, so as to read, as follows :

City of Wheeling authorized to levy tax on all real estate and titheables, Amount authorized to be levied.

1. That the council of the city of Wheeling shall have authority to levy an annual tax on all real estate and titheables within the limits of said city,

without exception: Provided, that such tax shall not in any one year exceed the sum of fifty cents for each titheable, and fifty cents on every hundred dollars value of said real estate.

CHAPTER LX.

AN ACT to amend and re-enact chapter one hundred and eleven of the code of West Virginia.

Approved March 24, 1873.

Be it enacted by the Legislature of West Virginia :

That chapter one hundred and eleven of the code of West Virginia is hereby amended and re-enacted, so as to read as follows :

CHAPTER CXI.

Of the writ of habeas corpus.

1. The writ of habeas corpus ad sub-ficiendum, shall be granted forthwith by the supreme court of appeals, or any circuit court, or any judge of either court, in vacation, or county court of any county in the state to any person who shall apply for the same by petition, showing by affidavit or other evidence, probable cause to believe that he is detained without lawful authority.

Writ habeas corpus
ad sub-ficiendum
how issued, and
to whom.

2. The writ shall be directed to the person in whose custody the petitioner is detained, and made returnable as soon as may be before the court or judge ordering the same, or any other of the said courts or judges.

How directed and
returnable, and be-
fore whom.

3. The court or judge granting the writ may previously require bond with security in a reasonable penalty, payable to the person to whom the writ is directed, with condition that the petitioner will not escape by the way, and for the payment of such costs

Bond may be re-
quired of petitioner

and charges as may be awarded against him. It shall be filed with the other proceedings on the writ and may be sued on for the benefit of any person injured by the breach of its condition.

Writ; how served.

4. The writ shall be served on the person to whom it is directed, or in his absence from the place where the petitioner is confined, on the person having the immediate custody of him.

Penalty for disobedience to writ.

5. If any person on whom such writ is served, shall, in disobedience to such writ, fail to bring the body of the petitioner, with a return of the cause of his detention, before a court or judge before whom the writ is returnable, for three days after such service, or when he has to bring the prisoner more than twenty miles, for so many more days as is equal to one day for every twenty miles of such further distance, he shall forfeit to the petitioner three hundred dollars.

Power of court or judge trying writ.

6. The court or judge before whom the petitioner is brought, after hearing the matter both upon the return and any other evidence, shall either discharge or remand him, or admit him to bail, as may be proper, and adjudge the costs of the proceedings, including the charge for transporting the prisoner, to be paid as shall seem to be right.

When affidavits may be read.

7. At the direction of the court or judge, the affidavits of witnesses taken by either party on reasonable notice to the other, may be read as evidence.

Facts proved to be made part of record.

8. All the material facts proved, shall, when it is required by either party, be made a part of the proceedings, which, when they are had in vacation, shall be signed by the judge, and certified to the clerk of the criminal court of the county in which the judgment is rendered, and be entered by him among the records of that court.

Duty of clerk.

Power of judge in vacation as to issuing and trying writ.

9. The judge issuing any such writ in vacation, or the judge before whom it is tried, shall have the

same power to enforce obedience to the writ, to compel the attendance of witnesses or to punish contempt of his authority as a court has ; and his judgment on the trial of the writ when entered of record as aforesaid shall be considered and be enforced as if it were a judgment of the court among whose records it is entered.

10. Any such judgment entered of record shall be conclusive, unless the same be reversed, except that the petitioner shall not be precluded from bringing the same matter in question in an action for false imprisonment.

Effect of his judgment.
Rights of petitioner in an action for false imprisonment.

11. If during the recess of the supreme court of appeals, the governor or the president of the said court should think the immediate revision of any such judgment to be proper, he may summon the court for that purpose to meet on any day to be fixed by him.

How and when court of appeals may revise such judgment.
How summoned.

12. When the prisoner is remanded the execution of the judgment shall not be suspended by the writ of error, or suspended for the purpose of applying for one. But where he is ordered to be discharged and the execution of the judgment suspended for the purpose of applying for a writ of error, the court or judge making such suspending order may in their discretion, admit the prisoner to bail until the expiration of the time allowed for applying for the writ of error, or in case the writ of error be allowed, until the decision of the supreme court of appeals thereon is duly certified.

When prisoner remanded, execution of judgment not suspended by writ of error.
When prisoner may be admitted to bail.

13. The writ de homine replegiando is abolished.

Writ de homine replegiando abolished.

Writs of habeas corpus ad testificandum.

14. Writs of habeas corpus ad testificandum may be granted by any circuit court, or any judge thereof in vacation, or county court of any county in the state, in the same manner, and under the same conditions and provisions, as are prescribed by this chap-

Writ of habeas corpus ad testificandum ; how and when issued.

ter as to granting the writ of habeas corpus ad sub-
ficiendum, as far as the same are applicable.

CHAPTER LXI.

AN ACT concerning the limitation of actions in cer- tain cases.

Passed March 25, 1873.

Be it enacted by the Legislature of West Virginia :

Limitation of ac-
tions in certain
cases.

1. That any person or persons, in peaceable pos-
session of land claiming title under a lease of the
same for the purpose of operating for oil or minerals,
and who may have continuously remained in such
possession for the space of three years, and have
bored for, and in good faith expended money in such
boring and operating, shall be entitled to plead said
facts in bar, and said facts shall be a bar to any
action at law, or in equity, instituted to establish title
to recover possession of said lease, or to recover the
profits received therefrom: Provided, that nothing in
this act contained shall be so construed as to author-
ize a tenant to set up as a bar to a recovery an ad-
versary possession against his landlord, and that this
act shall not affect any suit brought within twelve
months after the passage of this act.

Proviso.

Commencement

2. This act shall be in force from its passage.

CHAPTER LXII.

AN ACT requiring all officers having any moneys belonging to the counties of this state, in their possession or under their control, received in redemption of lands delinquent for non-payment of levies or other municipal taxes, to account for and pay the same to the counties to which such moneys belong, and providing for future receipts and payments.

Approved March 25, 1873.

Be it enacted by the Legislature of West Virginia :

1. That it shall be the duty of every officer of this state, who has in his possession or under his control, any money arising from the redemption or sale of lands returned delinquent for the non-payment of county, township, district, school or municipal taxes, or who may hereafter have in his possession or under his control, any such money, to account for and pay the same to the county in which the delinquency occurred, in the mode hereinafter prescribed.

Moneys received by officers from the redemption or sale of lands, &c., to be paid to the counties to which such moneys belong.

2. If the money arising from such redemption or sale of delinquent lands, be in the treasury of this state, having been placed there since the first day of March, 1871, and not already invested for the benefit of the school fund, or which shall hereafter come into the treasury as aforesaid, it shall be the duty of the auditor to issue his warrant on the treasury in favor of the sheriff of any county wherein such land became delinquent, upon his presenting an order of the county court of his county authorizing him to receive the same.

Duty of auditor as to such moneys that have been placed in treasury of state since March, 1871, or that may hereafter come into the treasury.

How and to whom paid.

3. In like manner and under the same restrictions and authority the said auditor shall account for and pay any and all moneys received into the treasury hereafter, on account of and in redemption of lands returned delinquent or sold for the non-payment of taxes as aforesaid. When the auditor shall have

Further duty of auditor as to such moneys.

Auditor's certificate to clerk of county court.

Court to have it entered of record.

Liability of sheriff as to such moneys.

How proceeded against.

Money received by sheriff or other officer for redemption of lands; how paid.

Annual settlement with sheriff.

Sheriff to furnish itemized account of all such moneys received by him.

Penalty for false report.

Sheriff or collector to give duplicate receipts.

paid to the sheriff of any county the money hereinbefore referred to, he shall certify to the clerk of the county court of the county whose sheriff received the money, the amount of money paid to such sheriff and the time of such payment; which certificate shall be laid before the court, and it shall be the duty of the court to cause the same to be entered of record, to the end that the sheriff shall be chargeable therewith in his settlement with the county; and it is hereby declared that any sheriff receiving money as aforesaid or from any person redeeming said land, shall be liable for the same, and the county in its corporate name, by motion on ten days' notice, shall recover from such sheriff and his securities the full amount of the money so received, together with interest and fifteen per centum damages thereon; which recovery may be had before the county court or circuit court of such county.

4. If the money arising from the redemption of such delinquent land has been paid by the person redeeming the same, to the sheriff or collector of any county, city or collection district, the same shall be paid by such sheriff in the mode and to the person directed by the county court, or prescribed by law; and in any settlement with the county the said collection and payment shall be taken into consideration. At the first settlement made, and annually thereafter, the sheriff or collector shall return to the court an itemized account of all moneys received by him, at any time not theretofore accounted for, in redemption of lands delinquent for county, township, district, school and municipal taxes; every such report shall be on oath or affirmation, and if such report be false, the sheriff, or any other person making the same, shall be guilty of perjury.

5. Hereafter, when any payment is made to any sheriff or collector, in the redemption of lands delinquent for the non-payment of taxes, such sheriff or

collector, to whom such payment is made, shall sign and give to the owner, or other person redeeming, duplicate receipts, showing when and by whom the payment is made; and the amount paid, and on what account it is due. One of said duplicate receipts shall be filed with the clerk of the county court of the county in which the real estate was sold; if the same be not so filed, the redemption shall be void. The sheriff of every county, at every time he makes a settlement with the county court, shall make a list of all real estate redeemed or sold as aforesaid, which shall be under oath or affirmation, as aforesaid; and shall then pay the sum of money, so received, in pursuance of the orders of the county court, as required by law.

What receipt must show.

Where filed.

Redemption void if receipt not filed.

Sheriff to make a list of all real estate redeemed or sold, for county court.

6. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Acts repealed.

7. This act shall be in force from its passage.

Commencement.

CHAPTER LXIII.

AN ACT concerning the removal of brush, trees and other obstructions from the South Branch river and two of its tributaries in Hardy, Grant and Pendleton counties.

Approved March 25, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the county courts of Hardy, Grant and Pendleton counties shall require the removal of all trees, brush, logs and other obstructions to the free passage of the waters of the South Branch of the Potomac river and its two tributaries, viz: the South Fork and the North Fork of the said South Branch within the limits of said counties, at least once in each year after the passage of this act and oftener if they deem it expedient.

Removal of obstructions out of certain waters authorized within the limits of certain counties.

Appointment of
commissioners au-
thorised.

air duties.

2. That in order to carry out the spirit and true intent of this act, the county courts for each of the said counties, shall, at their March or April court in the year 1873, and every two years thereafter, appoint a commission of three discreet freeholders in each of their respective counties, whose duty it shall be, once in every year or oftener if required by their respective county courts, to examine the islands and banks of the said South Branch and said tributaries, within the limits of the said counties and ascertain if there are any trees, brush or other obstructions permitted to stand by any owner of the lands lying on or any islands in said rivers, which would obstruct the free passage of the water, and thereby injure any adjacent lands thereto or along the said rivers within the limits of the said counties.

Commissioners to
notify owners of
obstructions.

How notice served.

Report of commis-
sioners to county
court if owners fail
within a given time
to remove obstruc-
tions.

3. If said commissioners shall find, upon an examination as aforesaid, that any owner of lands lying on, or islands in said rivers or water courses within the limits of either of said counties, has, or is permitting any timber or brush or other obstruction to the free passage of the water in said rivers to stand, they shall immediately give such owner notice to remove the same. Said notice shall be served as other notices are, and shall describe as accurately as possible the work the said commissioners desire the said owners to do. If said owners do not, within thirty days from the service of said notice, remove the timber, brush or other obstructions required by said notice to be removed, said commissioners shall report the names of any such so failing or neglecting, to the respective county courts, where the negligence exists, and in said report or reports, said commissioners shall describe the work or the timber, brush or other obstruction they require to be removed by each person failing to comply with their notice, and shall also file with said report a copy of the notice served upon any person or persons failing to comply therewith.

4. Upon the filing of said report by said commissioners before the county court or courts, they shall at their next regular term thereafter, order said commissioners to have such work or such timber, trees, brush or other obstructions as are mentioned in the notice served upon any owner of land situated as aforesaid, removed at the cost of the person or persons failing or neglecting to comply with said notice, and said amount may be recovered from said person or persons, in the name of the county in which the neglect originated, before a justice, county or circuit court of said county.

Upon filing report, court shall order commissioners to have such obstructions removed at cost of person failing to comply with the notice.

How recovered.

5. Said commissioners shall be allowed one dollar per day for every day they are engaged in the performance of the duties aforesaid, to be paid to them out of the county levy, and any person or persons appointed as aforesaid on said commission who shall fail, refuse or neglect to discharge the duties thereby imposed, shall be fined by the county court not less than ten nor more than thirty dollars, and such fine may be recovered from such person or persons before a justice in the name of the county or counties.

Pay of commissioners.

Penalty for failure to discharge duties of commissioner.

6. This act shall not be so construed as to require the owner to remove any mill dam lawfully established.

Mill-dams lawfully established not to be removed.

7. This act shall take effect and be in force from its passage.

Commencement.

CHAPTER LXIV.

AN ACT investing the board of education with the title of certain lands, and authorizing them to sell the same.

Passed March 23, 1873.

1. WHEREAS, It is represented to the legislature that, prior to the introduction of the present free school system, many lots or small pieces of land were

Preamble.

donated or purchased, and the title thereof, legal or equitable, vested in trustees with the view of erecting thereon buildings designed exclusively for educational purposes, and that they were used for such purposes many years prior to the formation of this state, and are still used or claimed by the boards of education in the various school districts in many of the counties of the state, and that said trustees in many cases have departed this life or left the state, and others since the introduction of the free school system have declined to act or take any interest in, or control over, such land; therefore,

Be it enacted by the Legislature of West Virginia:

Title of certain lands vested in boards of education.

1. That the title of all such lands be, and the same is hereby vested in the board of education of the school district in which such lands as have been in the actual possession of the board of education for the last five years, and are still in such possession and not otherwise claimed, may be, and their successors in office, to be held and used for free school purposes, and none other.

Board authorized to sell certain lands.

2. If from any cause the board of education of the school district in which any such land may lie, shall be of opinion that the interest and convenience of the schools of such district will be promoted by the sale of any of such lands, they may sell and convey the same, and use the proceeds of such sales in the purchase of other lands and the erection or repair of other buildings to be used and held for free school purposes, as in other cases.

Proceeds; how to be used.

Commencement.

3. This act shall be in force from and after the passage thereof.

CHAPTER LXV.

*Amended
Ch. 65.*

AN ACT amending and re-enacting sections one and two of chapter one hundred and twenty-nine of the code in relation to commissioners in chancery.

Passed March 28, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections one and two of chapter one hundred and twenty-nine of the code be amended and re-enacted, so as to read, as follows : Chapter amended.

“1. Each court may, from time to time, appoint commissioners for executing its orders and decrees, and for stating and settling accounts of fiduciaries, who shall be removable at its pleasure; such commissioners shall have no other powers, and exercise no other authority; and there shall not be more than three such commissioners at the same time, for the same court. The office of commissioner in chancery is abolished.” Power of court to appoint commissioners: how many and how removable

Powers of commissioners.

“2. The judge of each circuit court is empowered to appoint commissioners to execute its decrees and orders, and for stating accounts of fiduciaries, may, in vacation, appoint such commissioners with as much effect as the court could appoint them, and they shall have the like powers.” Judge may appoint in vacation.

CHAPTER LXVI.

AN ACT enlarging the powers of the Steer Creek Valley and Elk river railroad company.

Passed March 28, 1873.

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and eighty-eight, entitled “An act to incorporate the Steer Creek Valley and Elk river railroad company,” passed February 28, 1871, shall be and the same is hereby Act am

amended by sections, so that the sections, as amended, shall read, as follows :

The second section, as amended, shall read, as follows :

Company authorized to construct road.

Route of road.

"2. The said company is hereby authorized to construct a railroad, either of broad or narrow guage, as the stockholders may determine, from or near the mouth of Steer Creek, in the county of Calhoun, to such place on Elk river as the board of directors of the company may select, and to provide every thing necessary for the equipment and use of said railroad."

The third section, as amended, shall read, as follows :

Capital stock of company-

Shares to be personal property and transferable.

Votes of stockholders.

Subscription books.

Payments made either in land or other property.

Authority to purchase and hold land.

Where land to be located.

"3. The capital stock of said company shall not exceed the sum of five million dollars, to be divided into shares of one hundred dollars each, and shall be considered as personal property, and transferable ; and each share shall entitle the holder thereof, either in person or by proxy, to cast one vote in all meetings of the stockholders of said company. And for the purpose of obtaining subscriptions to the said capital stock, books may be opened under the direction of the persons named in the first section of said chapter, or any two or more of them, at such time and place, or places, in or out of this state, as the persons who act in that behalf shall deem expedient ; and payment may be made for any part of such subscription, either in land or other property ; and the said company shall be authorized and empowered to purchase and hold land as part of its capital stock : Provided, however, that all such land so subscribed or purchased, shall be located in this state."

The fifth section as amended shall read as follows :

Organization of company.

"5. When one thousand shares of the said capital stock shall be subscribed for, the said company may be organized by the election of seven directors, who

from their own number may elect a president and vice president, and may appoint and provide for the necessary officers of said company. The said president and directors shall have power and authority to conduct all business of said company, to borrow money for its use, to execute deeds of trust or mortgages on its property, in order to secure the payment of all of its debts, contracts or liabilities, or any of them, or to execute deeds of bargain and sale for all or any portion of the land belonging to and held by said company. All such deeds and mortgages shall be executed by the president of the company upon the order of the board of directors, entered upon the order book of the company."

Election of officers.

Power of president and directors.

Deeds and mortgages how executed.

The eighth section as amended, shall read as follows :

"8. The said company may and shall have full power and authority to locate, construct and maintain any branch railroad or railroads to any coal, timber, oil or other lands owned by the company."

Authority to construct branch roads.

2. The time to organize said company and to commence operations in the construction of said road is hereby extended for two years from the twenty-second day of August, 1872.

Time for organizing and commencing operations extended.

CHAPTER LXVII.

AN ACT amending and re-enacting sections three, fourteen and fifteen of chapter fifty-eight of the code, concerning the West Virginia Hospital for the Insane.

Passed March 23, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the third section of chapter fifty-eight of the code of West Virginia, as amended by an act entitled "An act to amend and re-enact the third and

Sections of chapter fifty-eight of code amended.

seventh sections of chapter fifty-eight of the code of West Virginia, concerning the West Virginia Hospital for the Insane," passed February 24, 1871, shall be, and the same is hereby amended and re-enacted so as to read, as follows:

Board of directors to consist of nine members.

Terms of office.

How appointed.

How removed.

Three to be selected from Lewis county; not more than one of the others to be appointed from any one county.

Quorum.

"3. The board of directors shall be composed of nine members, whose term of office shall be for one year, commencing on the first day of April. The said directors shall be appointed by the board of public works, who shall fill all vacancies that may occur; and, unless to fill a vacancy, the appointment shall be annually on the fourth day of March, or as soon thereafter as practicable. The said directors shall be removable at the pleasure of the board of public works. Not more than three of the directors shall be selected from the county of Lewis, and not more than one of the others from any one county; and, unless otherwise provided by law, any three of said directors shall constitute a quorum for the transaction of such specific business as may be designated and authorized by a full board."

The fourteenth and fifteenth sections of chapter fifty-eight of the code are hereby amended and re-enacted, so as to read, as follows:

Duty of officer to whom order of justice is directed

Patient to be kept in jail until vacancy in hospital.

When sheriff is informed of vacancy, patient to be carried to hospital.

"14. The sheriff, or other officer to whom such order of the justice is directed, shall immediately ascertain, by written inquiry of the medical superintendent of the hospital, whether there is a vacancy therein; and further ascertain whether the said superintendent will remove the said lunatic to the hospital. Until it is ascertained that there is a vacancy, and until the said superintendent shall remove the lunatic or order the sheriff so to do, the patient shall be kept in the jail of the county."

"15. The sheriff shall, as soon as he is informed that there is a vacancy, and received directions from said superintendent, carry the lunatic to the hospital. But if the superintendent remove the said lunat

no other or greater allowance shall be made therefor Actual expenses only allowed, if superintendent remove patient.
 than the actual expenses, to be paid out of the fund
 for transporting patients."

2. This act shall be in force from its passage.

Commencement.

CHAPTER LXVIII.

AN ACT to provide for the appointment, prescribe the duties and fix the salary of the State Librarian.

Passed March 28, 1878.

Be it enacted by the Legislature of West Virginia :

1. It shall be the duty of the board of public works to appoint a suitable person to have charge of the state library. The librarian shall be required to make a catalogue of the books and papers contained in said state library, in which shall be given the number of the case and the number of the shelf where each book may be found. Board of public works to appoint state librarian. Catalogue of books.

2. It shall also be the duty of the librarian to keep a file of all papers published in this state which may be furnished to the library, and of one published in the city of Washington. File of papers.

3. He shall also be ex-officio superintendent of weights and measures. superintendent of weights and measures.

4. The librarian shall continue in office for the term of four years, unless sooner removed for incompetency or gross neglect of duty. Term of office.

5. The librarian shall receive a salary of seven hundred and fifty dollars per annum, and he shall be required to give a bond in the sum of five thousand dollars with security, to be approved by the governor, conditioned for the faithful performance of his duties as state librarian. Salary. Bond.

Acts repealed.

6. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Commencement.

7. This act shall take effect from its passage.

CHAPTER LXIX.

AN ACT to amend and re-enact section two of chapter thirty-four of the code of West Virginia, and to repeal so much of an act passed February 25, 1871, and of sections three and thirteen of chapter thirty-four of the said code as is inconsistent or in conflict herewith, relating to insurance companies.

Approved March 29, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section two of chapter thirty-four of the code of West Virginia be amended and re-enacted so as to read as follows :

Unlawful to take risks or issue policies without certificate from auditor.

“2. It shall not be lawful for any officer or agent of any fire or marine insurance company, directly or indirectly, to take risks or issue policies of insurance within this state without first procuring from the auditor a certificate as hereinafter directed.

Furnish statement to auditor.

Before obtaining such certificate such company, its officers or agents, shall furnish the auditor with a statement, under oath of the president or secretary of the company for which he or they may act, which statement shall show :

Name and locality.

FIRST. The name and locality of the company ;

Capital stock.

SECOND. The amount of its capital stock ;

Stock paid up.

THIRD. The amount of its capital stock paid up ;

Assets.

FOURTH. The assets of the company, including, First, the amount of cash on hand and in the hands of agents or other persons ; Second, the real estate unincumbered ; Third, the bonds owned by the company and how they are secured, with the rate of in-

terest thereon ; Fourth, debts to the company secured by mortgage or otherwise ; Fifth, debts for premiums ; Sixth, all other securities ;

FIFTH. The amount of liabilities due or owing to banks or other creditors by the company ;

Liabilities.

SIXTH. Losses adjusted and due ;

Losses due

SEVENTH. Losses adjusted and not due ;

EIGHTH. Losses unadjusted ;

Unadjusted.

NINTH. Losses in suspense waiting for future proof ;

In suspense.

TENTH. All other claims against the company ;

All claims,

ELEVENTH. The greatest amount insured in any one risk ;

Greatest risk.

Which statement shall be filed in the office of the said auditor. And no foreign insurance company, or

To be filed.

agent thereof, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual capital, invested in the stock or bonds of some one or more of the states of this Union whose bonds are at par ; or of the bonds of the United States at the current market value thereof at the date of such statement ; or in bonds secured by mortgage or deed of trust on real estate, within this state, worth double the amount for which the same is mortgaged, free from any prior incumbrance, and having undoubted title. The auditor shall be authorized to examine

Required capital.

into the condition and affairs of any foreign insurance company doing business in this state, or cause such examination to be made by some person or persons appointed by him having no interest in any insurance company. And whenever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificate granted in behalf of such company, and shall cause a notification thereof to be published in some newspaper of general circulation published at the capital of this state, and the agent or agents of such company are, on and after such

Auditor may examine condition of foreign insurance companies.

May revoke certificate.

notice, required to discontinue the issuing of any new policies, or the renewal of any previously issued. When, by the laws of any other state, any deposits of money or of securities, or other obligations or prohibitions, are imposed, or would be imposed on insurance companies of this state, doing, or that might seek to do business in such other state, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such other state doing business within this state, or upon their agents here. Every foreign insurance company doing business in this state, at the time of making the annual statement as required by law, shall pay into the state treasury, as taxes, three per cent. of the gross amount of premiums received in this state during the previous year, taking duplicate receipts therefor, one of which shall be filed with the auditor; and upon the filing of said receipts, and not till then, the said auditor shall issue the annual certificate as provided by law, and the said sum of three per cent. shall be in full of state taxes only: Provided, that any foreign life insurance company which shall invest in this state the whole amount of its net receipts from its business therein, shall pay only one-third of the aforesaid rates. No officer or agent of a foreign insurance company shall make, renew or negotiate in this state any insurance, or contract for insurance on behalf of such company, or transact any business for such company, directly or indirectly, without first obtaining the auditor's certificate of authority as required by law; and this applies to all persons engaged in any manner in soliciting risks, insuring or obtaining the issue of policies, selling tickets of insurance, or otherwise doing the business of insurance, either by direct appointment from a company or as such agent."

Deposits of money
or securities re-
quired in certain
cases.

Tax to be paid.

Receipt therefor.

To be filed with
auditor.

Proviso.

Auditor's certifi-
cate.

2. So much of the act passed twenty-fifth of February, 1871, and of sections three and thirteen of chapter thirty-four of the code of West Virginia, as is inconsistent or in conflict with this act, is hereby repealed. Act repealed.

CHAPTER LXX.

AN ACT to provide for a preliminary survey of the Iron Valley and Pennsylvania Line Railroad.

Approved March 29, 1873.

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful for the Iron Valley and Pennsylvania Line Railroad Company to employ a skillful and competent civil engineer, and such engineer, with the approval of a majority of the company employ such number of assistants and aids as may be necessary to carry out the work hereinafter mentioned. Engineer and assistants.

2. The said engineer shall select and survey the most eligible and practicable route for the construction of a railroad, keeping in view the general direction indicated in an act passed February 26, 1872, for building a railroad through the county of Preston to connect the travel from the Pittsburg, Washington and Baltimore Railroad to that of the Baltimore and Ohio railroad. The said engineer shall be required to report from time to time as the work progresses, to the aforesaid company, upon the best, nearest and most practicable route, keeping strictly in view the general course provided in the act aforesaid. Route. Report of engineer.

3. The pay of said engineer shall be fixed by said company when such survey shall have been completed and approved of by a majority of said company; he shall report to the company the course and Pay of engineer.

\$1,000 appropriated.

distance, with the grade, cuts and fills, and any other thing relating to the final completion of said road ; and to carry out the provisions of this act the sum of one thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, to be drawn, used and accounted for by said company in accordance with the foregoing provisions.

CHAPTER LXXI.

AN ACT providing that the time within which, under existing charters or grants of special or exclusive privileges, the organization of commencing the work of any company is authorized, shall be extended two years from the twenty-second day of August, 1872.

Approved March 31, 1873.

Be it enacted by the Legislature of West Virginia :

Time extended.

1. That the time within which, under existing charters or grants of special or exclusive privileges, the organization of commencing of work of any company is authorized, is extended two years from the twenty-second day of August, 1872.

Commencement.

2. This act shall be in force from its passage.

CHAPTER LXXII.

AN ACT to make valid and binding the acts of certain persons in office from the seventeenth of April, 1861, to the time at which the government of West Virginia was organized in the counties where such persons acted as officers.

Approved March 31, 1873.

Be it enacted by the Legislature of West Virginia :

Acts done by recognized public officers, such as

1. That all the judicial and ministerial acts of persons in office, and recognized as officers by the public, done and performed by such persons in all or any of

the counties of this state, in which the reorganized government of Virginia or the government of the State of West Virginia, was not in operation or in force between the seventeenth day of April, 1861, and the time of the organization of this state in the said counties, such as sanctioning and protecting marriage, granting license, recording deeds and other writings necessary to be recorded, are hereby declared valid and binding, and to have the same force and effect as though the act done was performed by the proper officers, acting under the restored government of Virginia, or under the government of West Virginia, and any act or deed done and performed by any executor, administrator, or other fiduciary, in any of the counties aforesaid during the time aforesaid, who qualified as such executor or fiduciary in the state of Virginia, shall have the same force and effect as though said executor or other fiduciary had qualified under the restored government of Virginia or under the government of West Virginia: Sanctioning marriage. Granting license. Recording deeds and writings. Made valid and binding. Administrators, &c Provided, however, that it shall be competent within two years from the passage of this act, for any person aggrieved by the act herein declared valid, to have such act corrected, set aside or annulled by such proceedings as are provided by law in similar cases. Proviso.

2. This act shall be in force from and after its passage. Commencement.

CHAPTER LXXIII.

AN ACT to amend and re-enact sections, two, six, seven, fourteen and nineteen of chapter one hundred and sixty-three of the code of West Virginia:

Passed April 1, 1873.

Be it enacted by the Legislature of West Virginia:

1. That section two of chapter one hundred and sixty-three of the code, be amended and re-enacted so as to read, as follows: Section amended.

Board of directors ; " 2. There shall be a board of directors of the penitentiary consisting of five persons, appointed by the

How appointed. board of public works on the fourth day of March, or

Term of office. as soon thereafter as practicable. The term of office shall be four years from and after the first day of April, succeeding their appointment, and they shall

Compensation. each be allowed as compensation for their services, the sum to be fixed by the board of public works, not to exceed three dollars for each day necessarily employed and ten cents per mile for every mile necessarily travelled in going to and returning from the

Vacancies. penitentiary by the most direct route ; and vacancies in the board shall be filled as they occur by the board

Proviso. of public works : provided that no two directors shall be residents of the same county ; and provided further, that one director shall reside in the county of Marshall. The present board shall continue in office until the fourth day of March, 1873, and until their successors shall have qualified."

Section amended. 2. That section six of chapter one hundred and sixty-three of the code be amended and re-enacted so as to read as follows:

Report of directors. " 6. The board of directors shall semi-annually on the first day of December and the first day of June, make a report to the governor of their proceedings during the preceding six months, showing the condition of the penitentiary financially, and of all moneys received or disbursed by the said board, or any of its officers and agents from all sources, and for every service performed, which report shall be under oath or affirmation ; and the said directors or any other officer or agent of said penitentiary who shall wilfully make a false report shall be deemed guilty of perjury. The said board shall also report the manner in which the rules have been executed and enforced in respect to the convicts and their effects ; the condition of the health of the prisoners, and the deaths during the said six months, and make any

Penalty.

proper suggestions as to the discipline and organization of the penitentiary, deemed pertinent or valuable; which report shall by the governor, be laid before the legislature."

3. That section seven of chapter one hundred and sixty-three of the code be amended and re-enacted so as to read as follows :

"7. The board of public works shall, on the fifteenth day of April, in the year 1873, and every two years thereafter, appoint a superintendent of the penitentiary at Moundsville, whose term of service shall begin on the first day of May, next after his appointment, and who shall be its chief executive officer and have charge of its internal police and management and provide for feeding, clothing, working and taking care of the convicts; prepare drawings and superintend the erection of buildings and outer walls of said penitentiary, subject to the control of the board of directors. The superintendent shall receive as an annual salary not to exceed fifteen hundred dollars, at the discretion of the board of public works, and shall give bond with one or more sufficient sureties in the penalty of ten thousand dollars, conditioned for the faithful performance of his duties. He shall submit to the board from time to time a list of material needed at the penitentiary, make purchases of material at their discretion, and may during the recess of the board, make purchases subject to their approval. He shall also have the custody of the public property at the penitentiary, and may, in the name of the state, take all necessary legal measures to enforce and protect the rights of the state in and to such property. The board of public works may remove the superintendent and said board may fill any vacancy that may occur in the office of superintendent. When the warden's house at the penitentiary shall be sufficiently completed, the said superintendent

Section amended.

Superintendent.

Term of office.

Duties.

Salary.

Bond.

Removal.

Residence.

shall reside therein; and until completed he shall reside in the immediate vicinity."

4. That the fourteenth section of chapter one hundred and sixty-three of the code be amended and re-enacted so as to read as follows:

Committee of convict's estate.

Appointment.

"14. When a person is sentenced to confinement in the penitentiary for more than one year, the estate of such convict, if he have any, both real and personal, shall, on the motion of any party interested, be committed by the county court of the county in which his estate, or some part thereof, may be, to a person selected by such county court, who, after giving bond before the said county court in such penalty as said court may prescribe, shall have charge of said estate until such convict is discharged from such confinement."

Powers.

Section amended.

5. That the nineteenth section of chapter one hundred and sixty-three of the code be amended and re-enacted so as to read as follows:

May commit estate sheriff.

"19. If the person so appointed refuse the trust, or fail to give bond as aforesaid, the county court, on like motion, shall commit the estate to the sheriff of the county, who shall be the committee, and he and the sureties on his official bond bound for the faithful performance of his trust."

Commencement.

6. This act shall be in force from its passage.

CHAPTER LXXIV.

AN ACT authorizing the board of directors of the penitentiary to investigate certain claims against that institution, and report the result of such investigation to the next legislature.

Approved April 1, 1873.

Be it enacted by the Legislature of West Virginia:

Board of directors to investigate certain claims.

1. That the board of directors of the penitentiary are hereby authorized and directed to investigate

certain claims that J. H. Lockwood and George Edwards, citizens of Marshall county, West Virginia, may have against the state for lands and streets now used and occupied by the penitentiary, and report the result of such investigation to the next legislature. Report to legislature.

2. This act shall be in force from its passage.

Commencement.

CHAPTER LXXV.

AN ACT to punish persons guilty of violating the provisions of section forty-five, article six, of the constitution, and compelling persons to testify, and maintain exemptions from punishment on account of such testimony.

Approved April 1, 1873.

Be it enacted by the Legislature of West Virginia :

1. That if any person shall bribe, by directly or indirectly giving to or bestowing upon any executive or judicial officer of this state, or any member of the legislature, money, testimonial, or other valuable thing, in order to influence him in the performance of any of his official or public duties, he shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for a term of not less than two years, nor more than five years, and shall, moreover, be forever disqualified from holding any office or position of honor, trust or profit in this state. Bribe. Executive or judicial officer, or member of the legislature. Penalty.

2. That any person attempting to bribe, by offering or proposing to give any executive or judicial officer of this state, or any member of the legislature, money, testimonial, or other valuable thing, in order to influence him in the performance of his official or public duties, shall be deemed guilty of felony, and, upon conviction thereof, shall be imprisoned. Attempt to bribe. Penalty.

oned in the penitentiary for not less than one year nor more than three years, and shall moreover be forever disqualified from holding any office or position of honor, trust or profit in this state.

Officer demanding
or receiving bribe.

3. That if any executive or judicial officer of this state shall demand or receive from any corporation, company or person, any money, testimonial, or other valuable thing, for the performance of his official or public duties, or for refusing or failing to perform the same, shall be deemed guilty of felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than five years, nor more than ten years; and shall, moreover, be forever disqualified from holding any office or position of honor, trust or profit in this state.

Penalty.

Legislature, mem-
ber of demanding
or receiving bribe.

4. That any member of the legislature who shall demand or receive from any corporation, company or person, any money, testimonial or other valuable thing, for any vote or influence he may give or withhold as such member, shall be deemed guilty of felony; and upon conviction thereof shall be imprisoned in the penitentiary for not less than five years, nor more than ten years; and shall, moreover, be forever disqualified from holding any office or position of trust or honor in this state.

Penalty.

Compelled to
testify.

5. That any person bribing or attempting to bribe, or demanding or receiving a bribe, fee, reward or testimonial, as set forth in the preceding sections of this act, shall be compelled to testify against any person or persons who shall have committed any of the offences in said sections mentioned: Provided, That any person so compelled to testify shall be exempt from trial and punishment for the offence for which he may have been guilty, and concerning which he is compelled to testify.

Exempt from trial
and punishment.

Commencement.

6. This act shall be in force from its passage.

CHAPTER LXXVI.

AN ACT to amend and re-enact section four of chapter one hundred and forty-nine of the code, concerning unlawful marriages.

Approved April 1, 1873.

Be it enacted by the legislature of West Virginia :

1. That section four of chapter one hundred and forty-nine of the code be amended and re-enacted so as to read as follows :

“4. If any clerk of the county court knowingly issue a marriage license contrary to law, he shall be confined in jail not more than one year, or fined not exceeding five hundred dollars, or both, at the discretion of the jury.”

Issuing license contrary to law.

Penalty.

2. This act shall be in force from its passage.

Commencement.

CHAPTER LXXVII.

AN ACT making it unlawful for hogs to run at large in the county of Harrison and conferring the power upon the county courts to prevent hogs from running at large in any county or district thereof, and rendering and making owners liable for injury done to personal and real property of others.

Approved April 1, 1873.

Be it enacted by the Legislature of West Virginia :

1. That it shall be unlawful for owners to permit their hogs to run at large in the county of Harrison, and should such hogs whilst running at large, destroy or injure the personal or real property of another, the owner of the hogs shall pay to the party double the damages sustained by him for such destruction or injury; and the party so injured shall have a lien upon the hogs for the payment of the said damages, and should they be found upon his premises, he shall

Hogs not to run at large in Harrison county.

Damages to be paid by owner.

Lien on hogs.

May be sold.	have the right to retain them until the damages and costs of keeping are paid, and he shall immediately advertise the said hogs for sale, to be sold at the end of ten days unless the damages and costs of keeping be sooner paid; in which case the hogs shall be delivered over to the owner. The time and place of
How sold.	such sale to be posted at two public places in the neighborhood, a copy of which advertisement shall immediately be delivered to the owner of the hogs if he be found within the county, and should the damages and expenses of keeping be not paid at the end of the ten days fixed for the sale, it shall be lawful for the party injured to sell the said hogs to the highest bidder for ready money, the proceeds whereof after deducting the amount of damages and costs of
Residue to owner of hogs.	keeping shall be paid over to the owner of said hogs, if he shall make application therefor within six months, and if no such application be made within six months that the said residue be paid over to the proper authorities of the county for the benefit of the school fund. That the provisions of this act shall extend to
School fund.	all the counties of the state; Provided, that the county court may upon the petition of one hundred voters of the county, direct to have the same enforced in their said county or any district or districts thereof.
Application to counties and districts.	
Commencement.	2. That this act shall be in force from its passage.

CHAPTER LXXVIII.

AN ACT fixing the legal construction of the words "county court."

Approved April 1, 1873.

Be it enacted by the Legislature of West Virginia:

To include any other tribunal created under section thirty-four of article eight of the constitution, for police and fiscal purposes.

1. That the words "county court," contained in any act of the legislature heretofore or hereafter passed, shall include any other court, or other tribunal, as well for judicial as for police and fiscal

purposes, created under the provisions of section thirty-four of article eight of the constitution, and shall be construed to apply to such of them as the circumstances of the case may require.

2. This act shall be in force from its passage.

Commencement.

CHAPTER LXXIX.

AN ACT to provide for the public printing and binding, and for supplying stationery and printing paper for state use.

Approved April 1, 1873.

Be it enacted by the Legislature of West Virginia :

1. The auditor, treasurer and state superintendent of free schools shall be ex-officio commissioners of public printing.

Commissioners of public printing.

2. The commissioners of public printing shall, immediately upon the passage of this act, and every two years thereafter, during the first week in November, give notice in four newspapers printed within this state, for four weeks, that sealed proposals will be received at the office of the auditor until the thirtieth day after the publication of said notice, for the execution of the state printing and binding, and for supplying the state with stationery and printing paper, as hereinafter specified, for the term of two years from the second Wednesday of January next thereafter: Provided, that the first contracts made under this act shall expire on the second Wednesday of January, 1875; the work and paper to be delivered at the seat of government of the state: Provided, further, that the printing ordered for the current use of the legislature shall be delivered to the House for which it may be ordered at the opening of its session on the day succeeding that upon which the order for said printing shall be made, unless otherwise ordered; and the proposal for executing said printing for the current use of the legislature shall include

When and how commissioners to give notice for reception of sealed proposals for the execution of state printing, &c.

When first contract to expire.

Work and paper to be delivered at seat of government.

Printing for the legislature to be delivered to the house ordering the same; when to be delivered.

What proposal for executing printing for current use of legislature to include.

What must be
stated in proposals
for state printing;
stitching, binding,
&c.

the folding and stitching of the same. Said proposals shall distinctly and specifically state the price at which the bidder will do the work per thousand ems for the composition of all book and pamphlet printing for the state; including, also, the printing of all blanks, circulars and other work of like character; the price per page for all bills and other documents exclusive of reports of departments and institutions needed for the current use of the legislature; the price per token for all book and pamphlet press work, and the price per quire for the press work of all blanks, circulars and other work of like character; the rate per quire for making blank books of record; the rate per hundred signatures for folding and stitching the laws, journals and other public documents; the rate per hundred signatures for binding the laws, journals and other books to be bound in hard covers; the rate per hundred signatures for binding with muslin backs and paper covers; the rate per hundred paper covers for pamphlets, including the composition, paper and pasting; the rate per hundred copies for arranging in suitable packages the laws, journals and court reports, and delivering them at the office of the secretary of state, for distribution by him. The proposals shall also state the price at which the bidder will do the work per quire for ruling the various grades of blanks for the use of the state, when but a single form is struck, and the price per quire for each additional form. Said proposals shall also state the price per pound for each class respectively, at which the bidder will furnish flat, record papers, and all other stationery, and the price per thousand at which he will furnish the envelopes needed for the use of the state, the book paper to be sized and calendered, and to be of such size, weight and quality as the said commissioners of printing shall approve; the flat paper, record paper and envelopes to be of such character and

Bidder to state
price for ruling
blanks.

Also, price per
pound for each
class of paper.

Also, price of
envelopes.

Commissioners to
rescribe character
and quality of paper
&c., to be furnished.

quality as the said commissioners of printing, prior to the letting, may prescribe.

Each proposal shall be accompanied by a bond executed according to law by the bidder with at least two good and sufficient sureties residing in this state, in the penal sum of ten thousand dollars for all state printing, the penal sum of two thousand dollars for all state binding, and the penal sum of five thousand dollars for furnishing paper, conditioned for the faithful performance of the contracts; and no bid unaccompanied by such bond shall be entertained by the commissioners of public printing.

Each proposal to be accompanied by a bond, with two good and sufficient sureties.

Conditions and penalty of bond.

Amended to
1951-1972

3. The following rates for printing, folding, stitching and binding, and for paper and envelopes, shall be, and are hereby fixed as the maximum prices therefor, and no bids at higher rates shall be received, entertained or accepted. For plain composition sixty-five cents per thousand ems; for figure work where figures are arranged in columns, or for rule work, or for any other work requiring double justification, one dollar per thousand ems; and for rule and figure work one dollar and thirty cents per thousand ems, and at the contract rates for rule and figure work, one measure, and no more, shall be allowed for every five justifications; for press work sixty-five cents per token, estimating two hundred and forty impressions as a token, and eight pages for each form, octavo size: Provided, two hundred and forty impressions shall constitute a token, except when the work ordered shall not amount to that many impressions; then any less quantity shall be counted as a token; for press work per quire of all blanks, circulars and other work of like character; when printed on one side of a sheet of folio post, or any other larger sized paper, for the first quire one dollar and seventy-five cents; for the balance of the first ream fifty cents per quire and twenty-five cents per quire for every quire in excess of one ream.

Maximum rates fixed for printing and ruling,

When printed on note, letter, cap, or any larger paper, less than folio post, for the first quire one dollar and thirty cents; for the balance of the first ream thirty cents per quire and twenty cents per quire for every quire in excess of one ream: Provided, that twenty-four impressions, or any fractional excess thereof shall constitute a quire, and when the work ordered shall not amount to that many impressions, then any less number shall be considered as a quire. For printing bills and other documents of not more than six pages, for the current use of the legislature, two dollars and twenty-five cents per page, for two hundred and fifty copies, and for any additional copies that may be ordered nothing additional shall be charged, except for press work, and all bills and other documents exceeding six pages shall be estimated and paid for as book and pamphlet work. For ruling folio post or any larger sized paper, single form, twenty cents per quire; each additional form fifteen cents per quire. For ruling note, letter, cap or any other paper less than folio post, single form ten cents per quire, each additional form seven cents per quire.

No compensation for drying, pressing and folding.

Maximum rates for stitching and binding.

Maximum rates for paper and envelopes.

4. For drying, pressing and folding by the printer no compensation shall be allowed to the contractor. For folding and stitching the laws, journals and other public documents, fifteen cents per hundred signatures; for binding full calf at the rate of one dollar per hundred signatures; sheep eighty cents; for half binding seventy-five cents; for muslin backs and paper covers, fifteen cents; for pamphlet binding in plain covers, two cents; for preparing the laws, journals and court reports for distribution, two dollars per hundred copies. For book paper, twenty-two cents per pound; for flat paper, thirty-two cents per pound; for record paper, forty-five cents per pound; for envelopes, 6's or less, \$3.50 per thousand; 9's or less, \$6.00 per thousand; 14's or less, \$7.50 per thousand, and \$1.50 per thousand for printing all envelopes ordered to be printed.

For making blank books of record full bound, For blank books of record.
 Russia ends, fronts and bands, cap size, \$1.75 per quire; demy, \$2.25 per quire; medium, \$2.75 per quire; royal, \$3.25 per quire; super royal, \$4.00 per quire; imperial, \$5.25 per quire. Provided, that the paper used in books of record shall be of quality to be approved as aforesaid by the commissioners of printing, and of the following weights: Cap, twenty Weights of paper in books of record pounds per ream; demy, thirty-two pounds; medium, forty pounds; royal, forty-two pounds; super royal, fifty-two pounds; imperial, sixty-six pounds; and that where such books are ordered the rates for making record books shall cover the whole cost including the price of paper.

5. The commissioners of public printing or any two of them, shall within two days after the expiration of the term for receiving proposals as aforesaid, proceed to open in public all such proposals by them received, and they shall award the contract for printing, binding, printing paper and stationery, to the Proposals: how and when opened.
 lowest responsible bidder therefor. Contract to be awarded to lowest bidder.

If two or more persons bid the same and the lowest price, the commissioners shall award the contract to such one of them as, in their opinion, will best subserve the interest of the state; and the successful bidder shall, if he desire, have twenty days after notice of acceptance of his bid in which to commence the printing or binding under said contract. If two or more persons bid the same and lowest price, how amended.
Successful bidder to have twenty days in which to commence the printing.

6. The bills for the two houses of the legislature together with such resolutions and other matters as may be ordered by the two houses or either of them, to be printed in bill form, shall be printed with long primer type, each page to measure in width not less than thirty-one ems, and in length not less than fifty-four ems of the text type with a long primer reglet in each space between the lines. In estimating this class of work no entire blank page shall be counted or charged for. Bills and other matters of the legislature; how printed.
No entire blank page to be charged for.

Journals, executive documents, &c., laws, joint resolutions and supreme court reports; how printed.

7. The journals of the two houses of the legislature, all reports, communications or other documents ordered by the legislature or either branch thereof, executive documents, the laws and joint resolutions and reports of the decisions of the supreme court of appeals shall be in size, style of printing and binding, in all respects equal to and uniform with the work of the same class heretofore executed for this state.

Composition for printing blanks, circulars, &c., other than book, bill or pamphlet form; how estimated.

8. In estimating the composition for the printing of blanks, circulars and other work other than such as is printed in book, bill or pamphlet form, the same shall be estimated according to the body of the text type and measured from extreme points of type.

Open work; how estimated.

All open work such as blank bonds, commissions and the like shall be estimated in the same manner.

Composition for printing laws, journals, public documents and pamphlets; how estimated.

9. In estimating the composition of all laws, journals, public documents, and pamphlets, every fraction of a page shall be counted as a full page, but no entire blank page shall be counted or charged for. In making the estimate for rule and figure work but one measure and no more shall be allowed for every five justifications. But one charge shall be made for the composition of all documents ordered to be printed by both branches of the legislature and no charge or allowance shall be made for composition when extra or additional copies are ordered to be printed, but this rule shall only apply in the first instance to orders made for the same document, on the same or succeeding day by both branches of the legislature, and in the second instance to orders for additional copies which are made before the original order is filled. In estimating press work if any document makes less than eight pages or if the last form is not a full form of eight pages, the same shall be counted as a full form, except where two or more documents ordered can be printed on the same form.

Rule and figure work; how estimated.

For composition of all documents ordered to be printed by legislature, but one charge shall be made.

When extra or additional copies not to be charged for, or allowed.

When less than eight pages shall be counted as a full form.

Contract and bond, and all proposals to be submitted to the governor.

10. When a contract has been made by the commissioners of public printing, it shall be submitted,

without delay, to the governor, and with it shall be submitted also for his examination the bond which accompanied the proposal accepted, the accepted proposal itself, and all competing proposals received by the commissioners.

If the governor approve the contract, thus submitted, he shall within two days after receiving the same, endorse the fact thereon, and transmit it to the auditor, to be filed by him in the auditor's office. If the governor does not approve such contract, he shall within two days after receiving the same, notify the commissioners of the fact, and they shall proceed to re-let the contract, conforming in all respects, as far as applicable, to the provisions of this chapter in regard to the original letting.

If governor approve contract he shall endorse the fact thereon.

Where filed.

If governor does not approve contract, he shall notify commissioners of the fact and they shall re-let the same.

Upon the governor's approval of the contract, the auditor shall immediately notify the successful bidder that his proposal is accepted. If from death, or any other cause, there is a failure on the part of the successful bidder to proceed with the execution of the contract, within twenty days after notice of the acceptance of his bid, the commissioners of public printing may enter into a contract with the next lowest bidder, subject to the approval of the governor, or may re-let the contract, as hereinbefore provided, in case of the non-approval by the governor of a contract.

Auditor to notify successful bidder.

If contractor fail to proceed with execution of contract within twenty days after notice, commissioners may enter into contract with next lowest bidder, or re-let the same.

11. The secretary of state shall be the superintendent of public printing. He shall examine, estimate and determine the value of all work done by the contractor; and upon his estimate, accompanied by his official certificate of their correctness, the bills for paper, printing and binding shall be paid, but no bill shall be paid unaccompanied by the certificate of the said officer that the work therein charged for, has been done and delivered. No certificate of the said superintendent of public printing shall in any case be appended to accounts for work partially completed,

Superintendent of public printing. His duties,

If superintendent and contractor disagree as to measurement or value of work, commissioners to determine the case.

Further duties of superintendent.

When commissioners may transfer the work to others.

Liability of contractor and his sureties.

When contracts for paper, printing, binding, &c., may be annulled.

Failure of clerk to furnish side-notes or index not to justify an abrogation of contract.

Further conditions for annulling contract.

nor shall any money be paid on any account for unfinished work or unfilled orders for paper. In case of any disagreement between the contractor and superintendent as to the measurement or value of any work, the commissioners of printing shall immediately hear and determine the case. Their decision shall be final, and the certificate of the superintendent shall be rendered in accordance therewith. The said superintendent shall see that the printing and binding be properly and promptly executed, and report any negligence on the part of the contractor to the commissioners of printing, who, for good cause, may transfer the work to others, holding the contractor and his sureties liable for any damage or additional cost that may be incurred by the state.

12. Contracts for paper, printing, binding and stationery may be annulled by the commissioners of public printing for failure or manifest inability of the contractors to comply therewith, especially in any one of the following instances: When the contractor for printing shall fail to supply the legislature with at least fifty separate pages of printed matter per day, should the current orders of the two houses require that amount; when he shall fail to print the acts and deliver them to the person authorized to receive them, within forty days after the adjournment of the legislature; or where the binder shall fail to bind them within thirty days after they are delivered to him: Provided, that no failure of the clerk to furnish the index or side notes shall of itself justify an abrogation of the contract; when the printer shall fail to print the journals of the two houses within two months after adjournment of the legislature, or where the binder shall fail to bind them within four months after such adjournment: Provided, that no failure of the clerk to furnish his indexes promptly, shall operate to the prejudice of either contractor, nor shall any failure on the part of the printer ope-

rate to the prejudice of the binder; when the printer shall fail to print, and the binder to bind, the reports of departments and institutions by the fifteenth day of January: Provided, that the copy of the treasurer's report be placed in the printer's hands by the fifteenth of October; the copy of the reports of institutions by the first of November, and the copy of the other reports by the twentieth of November preceding the fifteenth day of January, as aforesaid: and provided, further, that the binder shall not be held responsible for the delay of the printer; when the contractor for paper shall deliver to the state any class of paper that may fall below the requirements of this act or of the commissioners of public printing. The annulling of the contract under any of the conditions above set forth shall render a contractor and his sureties liable to the state for any damages that may be incurred thereby.

13. The superintendent of the state printing shall file with the auditor at the time of rendering his estimate therefor, a copy of each item of book, pamphlet or job work, executed by the contractor. The actual number of ems or tokens, in all work required to be so measured and estimated, shall be certified by the said superintendent as just and correct before the auditor shall audit the same.

What superintendent of printing must certify to auditor before estimate can be audited.

And at least once in every six months, at such times as shall be designated by the said commissioners, the said superintendent shall make to said commissioners a report, in writing, of all books, documents, paper, envelopes, and all other articles and materials delivered to him by the contractor, together with the amount (and to whom) issued, used, worked up, lost, destroyed or in any manner disposed of by him; and also a detailed statement of the amount of all such articles and materials remaining on hand at the date of said report, which report and statement shall be sustained by the affidavit of said superin-

Superintendent to make semi-annual report to commissioners.

What report to contain.

tendent, and said reports shall be filed in the auditor's office.

Duties of clerk of senate and house.

14. The clerk of the house of delegates shall superintend the printing of the laws and all matter directed by law to be printed therewith; also the journal of the house and all printing ordered by the house or by joint order or resolution of the two houses; and the clerk of the senate shall superintend the printing of the journal of the senate and all printing ordered by the senate. If any such printing or any other printing or binding required by the state be not properly and promptly executed, or if any paper or stationery contracted for be not properly and promptly delivered, the failure thereof shall be forthwith reported by the superintendent to the commissioners of public printing, and with the approval of said commissioners others may be employed to do the work or any part thereof, or furnish the paper or stationery or any part thereof, and should such printing, binding, paper or stationery exceed in cost the contract price, then the contractors for the public printing, binding, printing paper or stationery, shall be liable to the state upon their bonds for such excess of costs.

If printing and binding required by the state be not properly and promptly executed, or paper or stationery promptly delivered, what then.

Contractor to do all printing for the state, and furnish all stationery.

15. Except as provided in the previous section all officers of the state authorized to procure paper or stationery, or to have any printing or binding done at the expense of the state, are required to have the same done by the contractor or contractors for the public printing, binding and stationery, and no money shall be paid out of the treasury for paper, stationery printing or binding, done in contravention of this section.

Number of house and senate journals to be printed.

16. The contractor or contractors for public printing and binding shall print and bind two hundred and fifty copies of the journal of the house of delegates, and the same number of the journal of the senate, in octavo form, and they shall be substantially

and in a workmanlike manner, half bound and delivered to the secretary of state; and the said secretary shall cause the same to be delivered, as follows: one of each to each member of the legislature, one to every clerk of the county court in the state, and the remainder as the governor may direct.

How printed and bound.
To whom delivered.
How distributed.

17. The printer shall print in octavo form, and the binder shall bind two thousand five hundred copies of the acts and joint resolutions of each session of the legislature, with the index and other matter directed by law to be published therewith; which shall be substantially and in workmanlike manner, half bound, if the number of pages in each copy exceed one hundred and fifty, but otherwise, done up neatly in pamphlet form with paper covers, and in either case delivered to the secretary of state.

Acts and joint resolutions to be printed and bound: number, of.
To whom delivered.

18. The contractor for the public printing shall print in octavo form five hundred copies of every bill or other document which may be directed to be printed, by the rules of either branch of the legislature or by special order, two hundred and fifty of which shall be reserved by the contractor to be bound with the journal of the house ordering the same. The remaining bills and documents so printed shall be delivered as follows: sixty copies of each bill or document to the clerk of the senate for the use of that branch, and one hundred and ninety copies to the clerk of the house for the use of that branch.

Bills and other documents: number of to be printed.
How distributed.

The contractor for printing shall receipt to the superintendent of public printing for all paper received of him, to the clerk of the house or senate, for copies of all acts, journals, indexes or side notes delivered to him for printing; and the binder shall give the contractor for printing a receipt for all acts, journals or other documents delivered to him for binding, the date of the delivery in either case to be explicitly stated in the receipt.

Contractor to execute a receipt for paper or work delivered.
Date of delivery to be stated in receipt.

Work to be certified
to by clerk of sen-
ate and house.

19. The bills for the work to be done as aforesaid for the senate and the house of delegates, shall when such work is done, be so certified by the clerks of those houses respectively, to the superintendent of printing.

Work for executive
departments; how
certified.

The work hereafter done for the executive departments including reports thereof shall, when done be so certified to the superintendent of printing by the officer authorized by law to order the same. Any other work shall when done, be so certified by the governor, and the bills therefor when examined, certified and approved by the superintendent of public printing shall be paid out of any money appropriated by law to pay for public printing.

Other work; how
certified.

How paid.

Clerk of house of
delegates; his duty
as to side-notes and
indexes.

20. The clerk of the house, as the acts of the legislature are passed, shall prepare in condensed form and deliver to the printer, briefs of the contents of the chapters of said acts to be printed therewith as heretofore in the form of side notes; he shall also prepare suitable and convenient indexes for the same, each index to be delivered to the printer within one week after the completion of the printing of the work for which it is designed.

Clerk of senate; his
duty as to index for
senate journal.

The clerk of the senate, immediately upon the adjournment of the legislature, shall prepare a suitable and convenient index for the senate journal; such index to be delivered to the printer within one week after the completion of the printing of the work for which it is designed.

Bills for public
printing; how
paid.

21. All bills for public printing, except the school department, shall be paid out of the appropriation for public printing.

Commissioners re-
quired to receive
bids separately.

22. The commissioners are required to receive separate bids for the printing, binding and printing paper, including stationery; and the contract shall in each case be awarded to the lowest responsible bidder or to the lowest bidder in the aggregate.

Contract; how
awarded.

23. All printing paper and stationery must be delivered to the superintendent of printing, who shall have charge of the same, and issue it as needed.

Paper and stationery: to whom delivered.

24. This act shall be in force from and after its passage.

Commencement.

CHAPTER LXXX.

AN ACT to amend and re-enact chapter forty-six of the code of West Virginia concerning the poor.

Approved April 1, 1873

Be it enacted by the Legislature of West Virginia:

That chapter forty-six of the code of West Virginia be, and the same is hereby amended and re-enacted so as to read as follows:

Code amended.

Appointment and tenure of office.

1. The county court of every county shall, at their first meeting for the purpose of laying the county levy after the passage of this act, appoint for each district of their respective counties, an intelligent and discreet voter, resident therein, as overseer of the poor for the said district. The term of office of overseer of the poor shall be two years from the date of their appointment, except that at the time of making the first appointment, one-half of said overseers in each county shall be appointed for the term of one year, and the remainder for the term of two years; and where there is an odd number of districts in any county, the larger number of said overseers of the poor shall be appointed for the term of one year. Annually, thereafter, at the time of laying the county levy, the county court shall fill vacancies caused by the expiration of the term of office of any of said overseers, by appointment for the term of two years: Provided, that a vacancy for

Overseers: how appointed.

Term of office.

Vacancy.

Justice not to be appointed

When to qualify.

Oath of office.

an unexpired term may be filled at any regular session of the county court, and shall be for the remainder of said unexpired term; and provided, further, that overseers now in office shall continue therein and discharge the duties thereof under the provisions of this act until the first annual levy court held in their respective counties. The office of justice of the peace and overseer of the poor shall be deemed incompatible. Every person appointed to the office of overseer of the poor shall, within thirty days after the date of such appointment, and before he enters upon the discharge of his duties, take and subscribe the oath of office prescribed by the fifth section of the fourth article of the constitution.

Meetings of the board of Overseers.

Annual meeting.

2. The county court of every county shall, from time to time, fix upon a day and place for an annual meeting of the overseers. Such time of meeting shall not be more than twenty days before the annual levy term of said court. The said overseers shall meet at the said day and place, and may meet at such other times and places as they may fix upon.

Other meetings.

President and clerk

Salary of clerk.

Called meetings.

President pro tem.

Journal.

3. If at the time fixed for any meeting, a majority fail to attend, those present may adjourn to another day. The overseers shall appoint a president and clerk. They shall fix the salary of their clerk at a sum not exceeding fifty dollars per annum, to be included in their annual statement. and paid on the order of the county court out of the county treasury. A meeting of the board may be called at any time by the president or one-third of the overseers upon giving to the others reasonable notice of the time of such meeting. If at any time the president of the board be absent, a president pro tempore may be appointed.

4. All the proceedings and accounts of the overseers shall be kept in a well bound record book, and said proceedings shall be signed by the person pre-

siding at the meeting at which they may have taken place. If the clerk shall, without sufficient excuse, fail to attend any meeting of the board he shall for- Failure of clerk.feit two dollars.

5. The overseers of each county shall be a corpor- To be a corporation.ation by the name of the overseers of the poor of such county, and shall succeed to all the rights and liabilities lawfully acquired or incurred by the corporations created in their respective counties by chapter forty-six of the code of West Virginia; and without any transfer or conveyance be deemed respectively the owners of the real and personal property in their several counties heretofore lawfully appropriated to the use of the poor thereof, and may receive, hold, use and dispose of according to the rules of law and the intent of the instrument conferring title, any gift grant, devise or bequest made for the use of the poor under their jurisdiction.

6. The overseers of the poor of every county may, May purchase land, &c.with the consent of the county court thereof, obtained at any fiscal or police term of said court, purchase lands for the use of the poor, and sell and convey lands heretofore or hereafter acquired for that purpose; may provide stock and instruments of husbandry on any of their lands, and use such lands as a place of general reception of the poor; and may provide a poor house, work house and other buildings and improvements. The overseers of two or more adjoining counties may, in like manner, jointly establish a place of reception for the poor of their several counties, and contribute to the expense of establishing, furnishing and supporting the same, in such proportions or under such regulations as may be agreed upon; but such common place of reception shall be under the management and direction of the overseers for the county in which it is situated, unless it be otherwise agreed between the overseers of the several counties concerned; and the persons under

whose management and direction such common place of reception may be, shall exercise in respect to the same, the authority mentioned in the succeeding section.

Managers, &c.

7. The overseers of a county may employ managers, physicians, nurses and servants to take care of the poor, or any of them under their charge; and

Regulations.

prescribe regulations respecting the places at which the poor are kept, and the discipline and order to be observed or enforced at the same.

What persons are to be supported or assisted, and how.

When person
to have a legal
settlement.

8. A person shall not be deemed to have a legal settlement in any county until he has resided one year continuously therein; nor if he has immigrated into the state within three years, unless at the time of so migrating he was able to maintain himself.

Application for
relief

9. On application by, or on behalf of, any person who is unable to maintain himself, or by or on behalf of the family of any person when he is unable to maintain it, and the family is unable to maintain itself, such person or family, if he or they have a legal settlement in the county, shall be provided for or assisted as his or their necessities may require, under the order and direction of the overseer of the district in which such settlement may be; and if he or they have not a legal settlement in the county, shall nevertheless be provided for or assisted, under the order and direction of the overseer of the district in which they may be, until properly removed, as hereinafter provided. But the board of overseers of the county may change or rescind any order or direction given by such overseer, and may direct any person or family to be provided for, though the overseer of the district has refused to do so.

Overseer's duty.

Where person as
sisted to be kept.

10. Any person to be provided for or assisted as aforesaid, may either be kept at the place of general reception, or be supported or assisted elsewhere; but

in a county where there is a poor house, he shall not be kept at the expense of the county at any place other than such poor house, except in case of emergency or necessity, or only where temporary or partial relief is required, and then only so long as the emergency or necessity may require. All poor persons kept at the place of general reception, who are able to work, shall be required to perform such reasonable and moderate labor as may be suited to their sex, age and bodily strength; and the proceeds of such work shall be appropriated to the support of the poor of the county, in such manner as the board of overseers may from time to time direct.

11. The overseer of every district shall have decently interred the remains of such persons as die therein, who, at the time of their death, may not have possessed property enough to pay the expenses of such burial; and the board of overseers may, by order entered on their journal, fix a maximum sum to be paid for the interment of persons who have to be buried at the public expense. Burials.

12. The overseer of a district may cause to be vaccinated with proper vaccine matter any persons in such district who are unable to pay the expenses thereof. Vaccination.

Of paupers found in a county where they have not a legal settlement.

13. On the complaint of an overseer for any district before a justice thereof, that any person has come into such county who is likely to be chargeable thereto, such justice may, by warrant, cause such person to be brought before him, and upon proof of the truth of such complaint shall cause the person complained of to be removed to the county wherein he was last legally settled, or if he has migrated from another state and has no legal settlement in this, to be removed to such other state, unless he be so sick Paupers non-resident.
May be removed.

or disabled that he cannot be removed without cruelty or danger of life ; in which case he shall be provided for at the charge, in the first instance of the county wherein he is, and after his recovery shall be removed.

Overseers of county in which pauper has legal settlement to provide for him and repay charges.

14. The board of overseers of the county wherein such person was last legally settled, shall, upon his being so removed thereto, provide for him and repay all the charges incurred for his maintenance, cure and removal. If he die before removal they shall repay the charges for his burial and those incurred during his sickness. In case of their failure to comply with this section, complaint may be made before the circuit court of the county in which they reside, and a summons may be awarded against them ; upon the return of which executed, the circuit court may order them to provide for him and order payment of the charges aforesaid, and compel obedience to any such order by attachment or otherwise.

Penalty for bringing pauper into state.

15. If an indigent person, not having a legal settlement in this state, be brought into and left in the same, with intent that he should become a public charge, every person who brought or caused to be brought, or counseled or aided in bringing, such indigent person into the state with intent as aforesaid, shall forfeit one hundred dollars for every such offence.

Public beggars.

Beggars.

16. Every overseer shall exert himself to prevent any person from going about begging or staying in any street or other place to beg. Every such person, if properly a county charge, shall immediately be taken up and conveyed to the place of general reception for the poor of the county in which he may be found, if there be one, or if he has a legal settlement in another county of this state, he may be proceeded against according to the thirteenth section.

To be taken up.

Or where he has migrated from another state and has no legal settlement in this, the board of overseers may cause him to be removed to such other state. To carry into effect this section an overseer may issue a warrant to a constable.

Liability of the relations of a pauper for his support.

17. The relations who are of sufficient ability of Relations of pauper
liable for support. any pauper, shall be liable in the following order, to support such pauper in such manner as shall be approved by the board of overseers of the county in which such pauper may be and pay the expenses of his burial when he dies, that is to say: First; the father. Second; if there be no father or he be not of sufficient ability, then the children. And third; if there be neither father nor children or they be of insufficient ability, then the mother. But if any relation so liable do not reside in this state and has no estate or debts due him within the same by means whereof the liability can be enforced against him the other relatives shall then be liable to support such pauper in the order above mentioned; but no such relation shall be compelled to receive such pauper in his own house against his consent; Provide. that such relations shall be liable only to the extent of the estate, money or property received from such pauper by gift or without valuable consideration.

18. The prosecuting attorney upon the order of Proceedings in relation thereto. the board of overseers of the county in which the pauper may be, shall proceed by motion in the county court of such county, against any one or more of the relatives liable as aforesaid, and the court shall thereupon hear the allegations and proofs of the parties, and assess upon such of the relatives, duly notified of the proceeding, as appear to be liable therefor and of sufficient ability, such sum as will reimburse to the overseers the expense, if any, incurred by them, in or about the support or burial of such

pauper, up to the time of the assessment, with interest and costs; and payment thereof may be enforced by execution. The court shall, further, as the case may require, assess upon the said relatives such sums, to be payable quarterly thereafter to the board of overseers, until the further order of the court, as will be sufficient for the future support of the pauper, if he be living; and the clerk of the court shall, from time to time thereafter, on application of the board, or the president thereof, issue execution for the arrears of any preceding quarter, with interest from the time appointed for the payment thereof, and costs.

19. The court may direct any questions of fact arising in such proceeding to be tried by a jury; and may from time to time, on the motion either of the board of overseers or any relative affected thereby, vary, as circumstances may require, the judgment or order, as far as it relates to the future support of the pauper. But no jury fee shall be taxed in any proceeding under this section.

20. The court may proceed, by summons and attachment, instead of motion, against the persons, or any of them liable as aforesaid, with like effect and subject to the like rules and principles as if the proceedings were instituted to recover damages for a breach of contract, or money for a claim.

21. If it shall appear in any case that the party liable is unable wholly to support the pauper, but is able to contribute towards such support, the court in its discretion may assess upon him the proportion which he shall be required to contribute, either to the past expense incurred by the board, or to the future support of the pauper, or both, and assess the residue upon the relatives in the order aforesaid. Any payment of the said assessment, with interest and costs, may be enforced by execution as aforesaid.

Duties, tenure of office and compensation of agent.

22. The board of overseers of any county may ap-^{Agent,} point an agent who, before acting as such, shall execute a bond to the said board in such penalty and with such sureties as the board deem sufficient, conditioned as required by law.

23. Such agent shall have charge of the poor^{To have charge of poor house.} house, or place of general reception for the poor of the county; but shall be at all times under the control of the board of overseers, and observe the rules and regulations prescribed by them. He shall receive persons into the poor house, to be supported therein, only on the order in writing of an overseer of the poor. He shall keep a register of all such persons,^{Register.} showing the name and age of each person; the date when he was admitted; whether he was admitted upon the order of the board of overseers or an overseer of the poor; and if the latter, the name of the overseer on whose order he was admitted. It shall also show whether any, and if any, which of the persons so admitted were kept at the place of general reception; for what length of time and in what manner; and shall note, with the proper dates, which of them were discharged or removed, escaped or died; with such other information as he may deem useful.

24. The board of overseers shall cause the poor^{Poor house to be visited.} house to be visited at least once a month by one or more of their number, who shall carefully examine the condition of the inmates, the manner in which they are treated and provided for; ascertain what labor they are required to perform; inspect the books and accounts of the agent, and generally inquire into all matters pertaining to the poor house, and report to the said board.

25. The agent shall keep for the board of over-^{Agent to keep money and property.} seers such money and property as it may authorize him to receive, or have the care of, and dispose of

the same as it may direct. He may in the corporate name of the overseers, and by their authority and direction, recover money or property for them, and defend proceedings against them, the board allowing the expenses of such prosecution or defense.

May sue and defend.

Agents to hold their office at pleasure of overseers.

26. Every officer, or other person, appointed or employed by the board of overseers, under the provisions of this chapter shall hold his office or employment at its pleasure, and receive for his services such compensation as it may deem reasonable.

Accounts of the agent and several overseers; legal proceedings against them.

Report of agent.

27. At such time as the board of overseers may direct, every agent and overseer shall render to the board a correct account of his transactions, with proper vouchers, and pay according to its order, such balance as may be in his hands. Any agent or overseer failing to do so shall forfeit not less than thirty nor more than one hundred dollars.

Penalty.

Judgment against agent or overseers.

28. The board of overseers of any county may move for and obtain judgment in the county or circuit court of such county against any overseer or his representatives, or against any agent or other person, and his sureties, and his and their personal representatives, for such balance as may be in the hands of, or be owing from such overseer, agent or other person, with lawful interest thereon, and for damages in addition thereto, not exceeding fifteen per centum.

Compensation of overseers.

Compensation of overseers.

29. The county court of the county shall allow each overseer therein out of the county treasury, such sum as they may deem reasonable for his services, not exceeding one dollar and a half for each day necessarily employed by him in the duties of his office; and the number of days employed by each over-

How reported.

seer shall be reported in their annual statement to the county court.

Annual statement of board of overseers.

30. The board of overseers of every county shall, When made. five days preceding the time for laying the county levy, make up and file with the clerk of the county court a statement showing the number of those provided for in that year, how many were males and What contain. how many females, how many were white and how many colored, for what length of time and where each was provided for or assisted, the name of each, the amount received by the overseers for the year, showing how much from the annual levy, and how much otherwise, the amount expended by them for the year, showing how much was expended at the place of general reception, and how much for those supported or assisted elsewhere, the balance remaining in the hands or under the control of the overseers, what amount in addition they will require to pay arrears of the past and meet expenditures for the ensuing year, and what will be the nature of the said expenditures. It shall show whether any, and if any, which of the poor under their charge were kept at work at the place of general reception, for what length of time and in what manner, whether in the work house or in tilling the land, or otherwise, and may continue such remarks upon the operation of the poor laws as the overseers may deem pertinent.

31. The amount expended by said board, or under their direction, in each year, with the items thereof, County court to include in annual statement. shall be published by the county court as a part of the financial statements of the county expenditures.

32. It shall be the duty of the auditor of public Auditor to furnish form for report. accounts to prepare, have printed and furnish to the clerk of the county court of each county three copies

To whom delivered. of the form for such report. Two of said copies shall be delivered by said clerk to the clerk of the board of overseers, and it shall be the duty of the president of said board of overseers to attend and assist said clerk in making up the report of said board. Two copies of said report shall be made by said clerk, one to be retained by him and filed with the records of his office, and the other filed with the clerk of the county court as aforesaid.

Within sixty days after the filing of said report the clerk of the county court shall make and transmit to the auditor a copy of said report, or so much thereof as the county court may approve and ratify.

Penalty for failure of clerk of overseers and clerk of county court to deliver reports.

33. In case such report be not so delivered the president and clerk of the board of overseers shall forfeit twenty-five dollars each; and in case such report be not so transmitted, the clerk of the county court shall forfeit twenty dollars. The auditor shall immediately give information of such failure to the proper prosecuting attorney that he may proceed against the delinquent party.

Prosecuting attorney.

Auditor.

34. From the copies so transmitted to the auditor he shall prepare and embrace in his bi-ennial report so much of the reports of the overseers as he may deem advisable.

Of the supply of money for the support of the poor, and disbursement of the same.

Levy for support of poor.

35. At the meeting of the county court for the purpose of laying the county levy, said court shall provide in the county levy for such amount as it may deem necessary for the support of the poor for the ensuing year, including the payment of arrears, and and from time to time thereafter shall appropriate out of the county treasury, such sums for that purpose as the said court may deem proper, and cause orders therefor to be issued on the county treasury.

36. The orders so issued on the county treasury shall be placed by the sheriff on his books to the credit of the board of the overseers for the support of the poor, if there be funds to pay the same ; and the sums specified in the said orders, with any other sums standing on his books to the credit of the board for the purpose aforesaid, shall be paid by the sheriff only upon orders of the county court, signed by the president, and countersigned by their clerk, payable to order and properly indorsed.

Sheriff to place to credit of overseers.

How paid.

37. The property belonging to the board of overseers in their corporate capacity, and used for the benefit of the poor of the county, shall not be subject to execution or other process ; but when a judgment or decree for a sum of money is rendered against them, a copy thereof, certified by the justice by whom, or the clerk of the court by which it was rendered, shall have to all intents and purposes the same effect as an order of the said county court upon the sheriff, and when the sheriff has funds in his hands to the credit of the said board, he and his sureties, or any one or more of them, and the personal representatives of such of them as are dead, shall be liable in like manner, and to the same extent and effect, for failing to pay the money due on such judgment or decree as for failing to pay a judgment against the county.

Property of overseers not subject to levy.

Remedy against sheriff failing to pay.

Construction of certain words.

38. In this chapter the word "overseer" is to be construed as if followed immediately by the words "of the poor." And the words "county court" shall be construed to mean "not only the county court proper, but also the board of commissioners" in any county in which the fiscal and police duties of the county court have been or shall be devolved upon a "board of commissioners."

Construction of certain words.

39. White and colored persons shall not be kept in the same apartment.

White and colored persons not to be kept in same apartment.

Commencement.

40. This act shall be in force from and after its passage.

CHAPTER LXXXI.

✓ AN ACT to amend and re-enact sections nine and twenty-six of chapter one hundred and thirty of the code, concerning evidence.

Approved April 1. 1873.

Be it enacted by the Legislature of West Virginia:

Sections amended.

That sections nine and twenty-six of chapter one hundred and thirty be amended and re-enacted so as to read as follows :

Circuit or county court, or other tribunal may order any of its books or records to be bound or transcribed.

"9. The circuit or county court, or any other court or tribunal established in lieu of a county court of any county, may order any of the books and records in the office of any surveyor of such county, and any of its own books or records to be bound or transcribed, and shall make a reasonable allowance therefor, which shall be paid out of the county treasury."

Writing or document; how produced.

"26. When it appears that a writing or document in the possession of any person not a party to the matter in controversy is material and proper to be produced before the court, or any person appointed by it or acting under its process or authority, such court, judge or president thereof in vacation may order the clerk of the said court to issue a subpoena duces tecum, to compel such production, at a time and place to be specified in the order."

2. This act shall be in force from its passage.

CHAPTER LXXXII.

AN ACT to provide for the removal of appeals from the judgments of justices now pending in the circuit courts to the county courts.

Approved April 1, 1873.

Be it enacted by the legislature of West Virginia :

1. On the motion of either the appellant or ap- Removal of appeal.
 pellee in any appeal from the judgment of a justice now pending in a circuit court, such circuit court, or a judge thereof in vacation, upon ten days' notice Notice. having been given to the adverse party, may remove such case to the county court having jurisdiction over such county.

2. When any such appeal is ordered to be removed under this act, the clerk of the court for which shall transmit to the clerk of the court to which it is removed, all the papers therein, with copies of all rules and orders made, and a statement of the costs incurred by each party therein; whereupon the case shall be proceeded in, heard and determined by the court to which it is removed, as if it had been an Clerk of court to transmit all papers and copies of orders to clerk circuit court.
 appeal filed in said court. County court to hear and determine case.

The costs attending such removal shall be charged Costs. as may be thought just by the court from which, or if it make no order on the subject, by the court to which it is removed.

CHAPTER LXXXIII.

AN ACT to amend and re-enact chapter fifty-five of the code of West Virginia, in relation to incorporated associations other than joint stock companies.

Approved April 1, 1873.

Be it enacted by the Legislature of West Virginia :

That chapter fifty-five of the code of West Virginia be and the same is hereby amended and re-enacted so as to read as follows :

How incorporated.

What corporation
may be formed.

1. Corporations (other than joint stock companies) may be formed under this chapter, for benevolent associations, societies and orders, including cemetery associations, orphan, blind and lunatic asylums and hospitals, lodges of free and accepted masons, independent order of odd-fellows, improved order of red men, sons of temperance, good templars, law or other library associations, and all other associations, societies, and orders of like character.

Agreement to be
entered into.

2. It shall be lawful for any number of persons not less than five, desiring to become a corporation for any business or purpose prescribed in the first section, to sign and acknowledge an agreement or declaration to the following effect: "The undersigned agree to become a corporation by the name of [here insert the name], for the purpose of [here insert the purpose], and for that purpose desire authority to purchase, hold, lease, sell and convey real property to the value of \$—— and personal property to the value of \$——. Given under our hands this —— day of ——, ——."

Form of.

How acknowl-
edged.

3. The said agreement or declaration shall be acknowledged by the parties signing the same, in the same manner that deeds are required to be acknowledged by the laws of this state; and when so acknowledged, it shall be filed with the clerk of the county court of the county in which the business or purpose of the corporation is to be carried on or pursued, and by said clerk preserved and duly recorded in a book to be kept exclusively for that purpose.

Where filed.

How recorded.

Clerk to issue cer-
tificate of incorpo-
ration.

4. The clerk shall thereupon issue to the corporators a certificate under the seal of his office, stating distinctly the names of the corporators, and the name, as well as the object and purpose of the corporation.

5. When a certificate of incorporation shall be Effect of certificate. issued by the clerk, pursuant to the preceding section, the corporators named therein, and their associates and successors, shall from the date of such certificate be a corporation by the name and for the purpose and object therein specified. And the said certificate of incorporation, or a certified copy thereof, shall be received in all courts and places as evidence of the existence of the corporation as aforesaid.

6. No corporation formed under this chapter shall be allowed to use or adopt the name of any other Corporation not to adapt name of another. corporation within this state.

Fees of clerks.

7. For issuing a certificate of incorporation according to the fourth section, the clerk may charge a fee Clerk's fees. of one dollar, and for recording the original agreement or declaration, as required by the third section, fifty cents, or in lieu thereof, fifteen cents for every one hundred words; which fees shall be paid at the time the service is rendered, by the person at whose instance it is done.

By-laws and regulations.

8. Corporations formed under this chapter may make and adopt for their government, and to enable By laws. them to conduct and pursue their business and purpose, all necessary by-laws and regulations not inconsistent with the constitution and laws of the United States and of this state; and except where it is otherwise in this chapter provided, shall (so far as the same are applicable,) be subject to and governed by the provisions of chapters fifty-two, fifty-three, and fifty-four of this act: Provided, That no corporation formed under this chapter, shall be authorized or allowed to hold and possess, at any one time, more Quantity of land to be held. than five acres of land within, and not exceed fifty acres, outside of an incorporated town or city: And

Legislature may alter or repeal.

provided, further, That the legislature may, at any time, alter, modify or repeal this chapter or any charter or certificate of incorporation issued thereunder."

Commencement.

2. This act shall be in force from and after its passage.

CHAPTER LXXXIV.

AN ACT to amend and re-enact sections four and eight of chapter thirty-nine of the acts of the legislature of West Virginia, being an act entitled "An act to incorporate the Keystone Bridge Company," passed February 13, 1871.

Approved April 2, 1873.

Be it enacted by the Legislature of West Virginia :

Act amended.

1. Section four of an act entitled "An act to incorporate the Keystone Bridge Company," passed February 13, 1871, be and the same is hereby amended and re-enacted as follows :

Directors.

Term of office.

1 resident.

Quorum of directors.

"4. The stockholders at their first general meeting, and at their stated and general meetings thereafter to be held in each year, at such times as the by-laws may prescribe, shall elect five directors of said company, being stockholders, who shall remain in office one year from the time of their election, and until their successors are appointed. As soon as may be after their election the board of directors shall choose one of their own body president of said company who shall act as such for the term of one year and until his successor is appointed. During the absence of the president the board may appoint a president pro tempore, who for the time shall discharge the duties of president. A majority of the board of directors shall constitute a quorum for the transaction of business."

2. Section eight of said act is also amended and re-enacted as follows: Section amended.

"8. The said company, so soon as the said bridge shall be completed and fit for use, shall be authorized to demand and receive thereat the same rate of tolls which the Elk River Bridge Company is by law authorized to receive. If the collector of tolls at said bridge shall demand and receive for the use thereof, from any person greater toll than aforesaid, the said company shall for every such offense forfeit and pay to the party aggrieved, the toll so demanded, and five dollars, to be recovered with costs before any justice of the peace of the district in which such offense was committed." Rates of toll. Penalty for demanding excessive toll.

3. This act shall be in force from its passage.

CHAPTER LXXXV.

AN ACT to amend and re-enact section two of chapter one hundred and forty-eight of the code, concerning offenses against the peace. ✓

Approved April 2, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section two of chapter one hundred and forty-eight of the code be amended and re-enacted so as to read as follows: Section amended.

"2. If a person be arrested for a riot, rout, or unlawful assembly, the judge or justice ordering the arrest, or any other justice, shall commit him to jail, unless he shall enter into recognizance with sufficient security to appear before the circuit or county court (in the discretion of such judge or justice) having jurisdiction of the offense, at its then next term, to answer therefor, and in the meantime to be of good behavior and keep the peace." Person arrested, committed or bailed

Commencement.

2. This act shall be in force from its passage.

CHAPTER LXXXVI.

AN ACT to amend and re-enact chapter fifty-seven
of the code of West Virginia.

Approved April 2, 1873.

Be it enacted by the Legislature of West Virginia :

Code amended.

1. That chapter fifty-seven of the code of West
Virginia, be and the same is hereby amended and
re-enacted so as to read as follows :

CHAPTER LVII.

Title.

Of church property and benevolent and educational
associations and institutions.

Property acquired by a church since the Revolution.

Conveyances here-
tofore or hereafter
made, legalized.

"1. Every conveyance, devise or dedication, which
has been made since the first day of January, 1777,
and every conveyance which shall hereafter be made
of land for the use or benefit of any church, religious
sect, society, congregation or denomination, as a
place of public worship, or as a burial place, or as a
residence for a minister, shall be valid and shall be
construed to give the local society, or congregation of
such church to whom it was so conveyed, devised or
dedicated, the control thereof, and the land shall be
held for such purpose, and no other : Provided, how-
ever, that no lot of ground used for church purposes
shall be taken from the members of the church that
purchased the same, or for whose use and benefit it
was conveyed, devised or dedicated."

Title to personal
property vested in
trustees.

"2. When books or furniture, or other personal
property, shall be acquired for the benefit of such
local society to be used on the said land in the cere-
monies of public worship, or at the residence of their

minister, the title of the same shall be vested in the trustees, in whom is vested the legal title of the land, to be held by them in the same way for the same uses, and under the same control.

“ 3. When any conveyance of land has been or shall be made to trustees for the use of any college, academy, high school or other seminary of learning, or for the use of any society of free masons, odd fellows, sons of temperance, good templars, or other benevolent associations, or if, without the intervention of trustees, such conveyance has been made since the thirty-first day of March, 1848, or shall be hereafter made for such use, the same shall be valid, and the land shall be held for such use only.”

Conveyance of land for colleges, academies, high schools, free masons, odd fellows, good templars, etc., valid.

Appointment of trustees.

“ 4. The circuit court of the county wherein any such lands are mentioned in the first section of this chapter, or the greater part thereof may lie, may, on the application of a majority of the members of any such church, religious sect, society, congregation or denomination, from time to time, appoint trustees, either when there were or are none, or in place of former trustees, and change those so appointed whenever it may appear to the court proper, to effect or promote the purpose of the conveyance, devise or dedication, and secure the same to the use of those justly entitled thereto; and the legal title to such land shall for that purpose be vested in the said trustees, for the time being, and their successors.”

Trustees of persons property, when to be appointed by circuit court.

“ 5. The circuit court of the county wherein any such lands as are mentioned in the third section of this chapter, or the greater part thereof may lie, may, on the application of any one or more persons interested therein, from time to time, appoint trustees, either where there were or are none, or in place of former trustees, and change those so appointed when-

Trustees of land, when to be appointed.

ever it may appear proper to effect or promote the purpose of the conveyance and secure the same to the use of those justly entitled thereto; but the court may, before making any such appointment or change, require a notice of such application to be served on such persons and in such manner as the court may designate. The legal title to such land shall, for the purpose mentioned in the conveyance, be vested in the the said trustees for the time being and their successors."

Suits by and against trustees.

Trustees may sue) and be sued.

"6. The said trustees, whether named in the conveyance, devise or dedication, or appointed as afore-said, shall be denominated "the board of trustees of the — church," (college, school, society, &c., as the case may be,) by which name they may sue and be sued, plead and be impleaded, contract and be contracted with, and do and perform any and all other acts and business pertaining to the trust created by such conveyance, devise or dedication."

How much real estate trustees may hold.

How much land trustees may hold.

"7. Such trustees may take and hold, for the purpose mentioned in the first section of this chapter, not exceeding two acres of land, in an incorporated city, town or village, and not exceeding sixty acres out of such city, town or village. For any of the purposes mentioned in the third section of this chapter, except for a college, academy, high school or other seminary of learning, such trustees may take and hold not exceeding two acres of land, and such land shall not be held for any other use than as a place of meeting for such society or association, and for the education and maintenance of children charitably provided for by them."

Power to borrow money, &c.

"8. The board of trustees of any church, religious sect, society, congregation, denomination, college, academy, high school, seminary of learning, society of free masons, odd-fellows, sons of temperance, good templars, or other benevolent association, may borrow money to use thereof for building or other legitimate purposes, and may execute a lien upon any property, real or personal, owned by them, to secure the payment thereof. And no such bond, issued by any such church, religious society, congregation, denomination, college, academy, high school, seminary of learning, society of free masons, odd-fellows, sons of temperance, good templars, or other benevolent association, shall be liable to any tax or levy for any purpose."

Power of trustee to borrow money.

May execute a lien

Exempt from tax.

How real estate held by trustees may be sold.

"9. Whenever any such board of trustees shall deem that the interest of those for whose use it holds any such real estate will be promoted by a sale thereof, it shall be lawful for such board to file a petition in equity in the circuit court of the county in which such lands, or the greater part thereof may lie, therefor, and such proceedings shall thereafter be had upon such petition as in a suit in chancery regularly brought and prosecuted in said court. An order of publication stating the filing of such petition and the object thereof, shall be posted on the court house door, and at some conspicuous place on the premises, and published for such time and in such manner as the court may prescribe; and any person interested may appear and resist such application. Upon the execution of such order it shall be lawful for such court, if a proper case be made, and the court be of opinion that the rights of others will not be violated thereby, to order a sale of such land and make such disposition of the proceeds thereof as

How real estate may be sold.

may be right and proper, and not inconsistent with the purposes for which the trust was created: Provided, that no such sale of land mentioned in the first section of this chapter shall be made unless it appear to the court that the majority of the members of such church, religious sect, society, congregation or denomination desire the same."

Personal property; how held.

Personal property.

"10. Personal property given or acquired for any of the purposes mentioned in the third section of this chapter, shall stand vested in the trustees having the legal title to the land mentioned in said section, and be held by them as the land is held."

By-laws and regulations, &c.

Trustees may make by-laws.

"11. The board of trustees of any such college, academy, high school or other seminary of learning as is mentioned in this chapter, may make and adopt all necessary by-laws, rules and regulations not inconsistent with the laws of the United States or of this State, for the government of such college, academy, high-school or other seminary of learning, and to enable the said board to properly discharge its duties as such."

Commencement.

2. This act shall be in force from and after its passage

CHAPTER LXXXVII.

AN ACT ceding the jurisdiction of the State of West Virginia over a lot or parcel of land in the city of Parkersburg, and relinquishing to the United States the right to tax the same, or the property of the United States, thereon.

Approved April 2, 1873.

Be it enacted by the Legislature of West Virginia :

1. The jurisdiction of the State of West Virginia, over a lot or parcel of land, in the city of Parkersburg,

which is, or shall be, selected by the United States, under the provisions of an act of congress, "to provide for a building suitable for a post-office, for the accommodation of the revenue officers, and the United States courts and their officers, in the city of Parkersburg, West Virginia," is hereby ceded to the United States; and the state of West Virginia hereby consents to the purchase of said lot by the United States, and releases and relinquishes to the United States, the right to tax or in any way assess said site or lot, or the property of the United States that may be thereon during the time that the United States shall be or remain the owners thereof: Provided, That the state of West Virginia hereby reserves the right to execute process, both civil and criminal, within the limits of the lot so purchased by the United States.

Jurisdiction of state ceded.

Releases the right to tax.

Provide.

2. This act shall be in force from its passage.

Commencement.

CHAPTER LXXXVIII.

AN ACT to provide for the incorporation of associations that may be organized for the purpose of constructing railroads, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so organized.

Approved April 8, 1878.

Be it enacted by the Legislature of West Virginia:

1. Any number of persons, not less than seven, may become an incorporated company for the purposes of constructing and operating any railroad in this state.

Corporators.

2. Such persons shall organize by adopting and signing articles of incorporation, which shall be re-

How organized.

corded in the office of the clerk of the county court of each county through or into which such railroad is proposed to be run, and in the office of the secretary of state; which organization shall take place within six months from the filing of such articles in the last named office.

3. Such articles shall contain:

Name.

FIRST. The name of the proposed corporation.

Location and route.

SECOND. The place from and to which it is intended to construct the proposed railroad, and the route thereof, or as nearly so as practicable.

Principal office.

THIRD. The place at which shall be established and maintained the principal business office of such proposed corporation.

Time of commencement.

FOURTH. The time of the commencement and the period of the continuance of such proposed corporation.

Capital stock.

FIFTH. The amount of the capital stock of such corporation.

Name and residence of incorporators.

SIXTH. The names and places of residence of the several persons forming the association for incorporation.

Shares.

SEVENTH. The number and amount of shares in the capital stock of such proposed corporation, and the par value thereof.

When deemed a body corporate.

4. When the articles shall have been filed and recorded as aforesaid, the persons named as incorporators therein, shall thereupon become and be deemed a body corporate, and shall be authorized to proceed to carry into effect the object set forth in such articles, in accordance with the provisions of this act. As such body corporate, they shall have perpetual succession, and in their corporate name may sue and be sued, plead and be impleaded. The said corporation shall have and use a common seal, which it may alter at pleasure; may declare the interest of its stockholders transferable; shall establish by-laws, and make all rules and regulations deemed necessary for

May sue and be sued.

By-laws.

the management of its affairs in accordance with law. A copy of any articles of incorporation filed and recorded in pursuance of this act, or of the record thereof, and certified to be a copy by the secretary of state, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated.

5. A copy of the by-laws of the corporation, when formed and adopted by the stockholders, duly certified, shall be recorded as provided for the recording of the articles of association in section two of this act. And all amendments and additions thereto, duly certified, shall also be recorded as herein provided, within ninety days after the adoption thereof.

By-laws to be recorded.

6. Every such corporation organized under the provisions of this act, shall hold its first meeting in this state at such time and place as may be designated by the incorporators thereof, and all subsequent meetings at such place or places, in or out of this state, as the directors may from time to time appoint; and the stockholders of every such corporation shall have authority at their first meeting, or any subsequent meeting, to fix and determine the place of meeting (in or out of this state) of the directors, and the principal office or place of business of said corporation: Provided, however, that such corporation organized under the provisions of this act, shall have and maintain an office or place in this state for the transaction of its business, where an exhibit of the transfers of all its stock shall be kept, and in which shall be kept, for the inspection of any officer or stockholder, books wherein shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock; the number of shares held by each person, and the number by which each of said shares is respectively designated, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said

First meeting.

Subsequent meetings.

Shall have an office in this state.

Exhibit of transfers of stock to be kept for inspection of officers or stockholders.

Stock books, what to contain.

stock; the amount of its assets and liabilities; and the names and places of residence of all its officers.

Attorney to be appointed to accept service of process or notice.

7. Every such corporation shall, within one hundred days after organizing, by power of attorney duly executed, appoint some person residing in the county in this state, wherein it has an office, to accept service on behalf of said corporation of any process or notice; the said power of attorney shall be filed and recorded in the county clerk's office of the county in which the attorney resides; and the admission to record of such power of attorney shall be deemed evidence of a compliance with the requirements of this section. Any such corporation failing to comply with such requirements shall, during the continuance of such failure, forfeit not less than five hundred nor more than one thousand dollars for every six months that such failure continues; and its property, real and personal, shall be liable to attachment in like manner as the property of non-resident defendants. And whether such agent accept the agency or not, the service of process upon such person so appointed shall be legal and binding on the corporation.

Penalty.

Board of directors.

Number.

Quorum.

Election.

8. All the corporate powers of every such corporation shall be vested in and be exercised by a board of directors composed of not less than five, nor more than thirteen, a majority of whom shall constitute a quorum, unless otherwise provided by the by-laws, who shall be stockholders of the corporation, and shall be elected at the annual meeting of the stockholders at the principal office or place of business of said corporation within this state or elsewhere as may be appointed under the sixth section of this act. The number of such directors, the manner of their election, and the mode of filling vacancies, shall be specified in the by-laws, and shall not be changed, except at the annual meeting of the stockholders.

Called meetings of stockholders.

9. A meeting of the stockholders may be called at any time during the interval between such annual

meetings, by a majority of the directors, or by the stockholders owning not less than one-fourth of the stock, by giving thirty days' public notice of the time and place of such meeting, in some newspaper of general circulation, published near the principal office or place of business of the corporation, which annual meeting shall be held at such time and place as may be prescribed by the by-laws; or, if there be no such by-law, then on the first Tuesday of September in each year, at the principal office or place of business of the said corporation, and in at least two like newspapers published in the vicinity of the line of the proposed railroad within this state: Time of meeting. Provided, That Proviso. if, at any such special meeting so called, a majority in value of the stock equal to two-thirds of the stock of such corporation, shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding ten days, without transacting any business; and if, within said ten days, two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned, and a new call may be given and notified as herein provided.

Regular meetings, statements, interest.

10. At the regular annual meeting of the stockholders of any corporation organized under the provisions of this act, it shall be the duty of the president and directors to exhibit a full, distinct and accurate statement of the affairs of the said corporation; Annual meeting. and, at any meeting of the stockholders, a majority of those present in person or by proxy, may require similar statements from the president and directors, whose duty it shall be to furnish such statements when required in manner aforesaid, and at all general meetings of the stockholders a majority in value of the stock of any corporation may fix the rates of interest which shall be paid by the corporation for Report of president and directors. Rate of interest on loans.

Removal of directors.

Vacancies.

Access to books.

Failure to elect directors not to dissolve corporation.

Majority of stock required to elect directors.

President.

Subordinate officers.

Duties.

Bond may be required.

Proviso.

Payment of stock subscribed.

loans for the construction of such railroad and its appendages, and the amount of such loans. At any special meeting, by a two-thirds vote in value of all the stock, such stockholders may remove all the directors of such corporation, and elect others instead of those removed, in the manner herein prescribed; but a vacancy not caused by such removal, may be filled by the board of directors. All stockholders shall, at all reasonable hours, have access to, and may examine all the books, records and papers of such corporation.

11. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of such corporation held for that purpose; the corporation for such cause shall not be dissolved, if within six months thereafter the stockholders shall meet and hold an election for directors in such manner as shall be provided by the by-laws of such corporation: Provided, that it shall require a majority in value of the stock of such corporation to elect any member of such board of directors.

12. There shall be a president of such corporation, who shall be chosen by and from the board of directors, and such other subordinate officers as such corporation, by its by-laws, may designate, who may be elected or appointed, and shall perform such duties and be required to give such security for the faithful performance thereof as such corporation, by its by-laws, shall require: Provided, that it shall require a majority of the directors to elect or appoint any officer, and fix his compensation.

13. The directors of such corporation may require the subscribers to the capital stock of such corporation to pay the amount by them respectively subscribed in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment, as required by a reso-

lution or order of such board of directors, the said board shall be authorized to declare such stock and all previous payments thereon forfeited for the use of the corporation; but the said board of directors shall not declare such stock so forfeited until they shall have caused a notice, in writing, to be served on such stockholder personally, or by depositing the same in a post office, properly addressed to the post office address of such stockholder, or, if he be dead, to his legal representatives, with necessary postage for its transmittal properly prepaid, stating therein that, in accordance with such resolution or order, he is requested to make such payment, at a time and place and in the manner to be specified in such notice, and that if he fails to make the same in the manner requested, his stock and all previous payments thereon shall be forfeited for the use of such corporation; and thereafter, such corporation, should default in payment be made, may sell the same, and issue new certificates of stock therefor: Provided, that the notice, as aforesaid, shall be personally served or duly deposited, as herein required, at least sixty days previous to the day on which such payment is required to be made.

When forfeited.

Notice.

Company funds.

14. The stock of such corporation shall be deemed personal property, and shall be transferable in the manner prescribed by the laws of such corporation. But no shares shall be transferable until all previous calls thereon shall have been paid.

Stock, personal property.

Transferable.

15. In case the capital stock of any such corporation shall be found insufficient for constructing and operating its railroad, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock from time to time to any amount required for the purpose aforesaid. Such increase shall be sanctioned by a vote, in person or

Increase of capital stock.

Notice how given.

by proxy, of two-thirds in amount of all the stock of such corporation at a meeting of such stockholders, called by a majority of the directors of the corporation for such purpose, by giving notice, in writing, to each stockholder, to be served personally or by depositing the same in a post office, directed to the post office address of each of said stockholders severally, with necessary postage for the transmittal of the same prepaid, at least sixty days prior to the day appointed for such meeting and by advertising the same in some newspaper of general circulation published near the principal office or place of business of the corporation, and in at least two like newspapers published in the vicinity of the line of said railroad within this state at least sixty days prior to the day appointed for such meeting. Such notice shall state the time and place of such meeting, the object thereof, and the amount to which it is proposed to increase such capital stock. And at such meeting the corporate stock of such corporation may be so increased by a vote of two-thirds in amount of the corporate stock of such corporation, to an amount not exceeding the amount mentioned in the notice so given. Should the directors of any such corporation desire at any time to call a special meeting of the stockholders for any other necessary purpose, the same may be done in the manner in this section provided; and if such meeting be attended by the owners of two-thirds in amount of the stock, in person or by proxy, any other necessary business of such corporation may be then transacted, except the altering, amending or adding to the by-laws of such corporation: Provided, such business shall have been specified in the notices given. And the proceedings of any such meeting shall be entered on the journal of such corporation. Every order or resolution increasing the capital stock of any such corporation shall be duly recorded as required in section two of this act.

Special meeting of stockholders.

16. No person holding stock in any such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such corporation, but the person pledging the stock shall be considered as holding the same and shall be liable as a stockholder accordingly.

Certain persons not liable as stockholders.

17. Each stockholder of any corporation formed under the provisions of this act shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him and no more, for any and all debts and liabilities of such corporation.

Individual liability of stockholders.

18. If any such corporation shall be unable to agree with the owner for the right of way, or for the purchase of any real estate required for the purposes of its corporation, or the transaction of its business, or for its deposits, station buildings, machine and repair shops, or for right of way, or any other lawful purpose connected with, or necessary to, the building, operating or running of said railroad and branches, such corporation may acquire such title in the manner as hereinafter provided, viz: the court of any county wherein the land or material to be taken may be, upon application therefor, shall appoint five disinterested persons, (any three of whom may act,) for the purpose of viewing and ascertaining a just and equitable compensation for the quantity of land actually taken by said railroad corporation, (but in no case shall the court appoint any person or persons through whose land said railroad is to pass, nor any person interested in the construction of said railroad,) and the sheriff of the county, after such appointment is made, shall summon the said viewers to meet on the land at such time as they may appoint, within thirty days after such appointment, giving twenty days' notice to the parties interested, unless such parties shall be non-residents of this state, in which case notice shall be given to such non-residents, by

Right of way.

Court to appoint viewers to ascertain compensation to land owners.

Sheriff to summon viewers to meet on the land.

Notice.

Notice as to non-resident land-owners.

Viewers to be sworn.

Return of report of viewers.

Actual value to be ascertained, without reference to prospective value.

Proceedings of court on report.

Exceptions to report.

Jury.

Railroad corporation can object to jurors.

publication, for four successive weeks in some newspaper published in some county through which it is proposed to construct such railroad, and if none be so published, then in some other newspaper published in this state; and such viewers shall not meet for the purposes of their appointment until the publication herein prescribed shall have been completed. The viewers aforesaid shall, before proceeding to perform the duties aforesaid, take an oath before some person authorized to administer an oath, that they and each of them will honestly, fairly and impartially ascertain and determine the amount said railroad corporation shall pay for the land actually taken as aforesaid, and return their report, signed by them, to the clerk of the court prior to the first day of the next term thereafter, wherein the proceeding is pending, setting forth therein the amount to be paid for the land so taken or to be taken by the said railroad corporation. And in estimating the value or damages on account of the land actually taken, the commissioners or jury, as the case may be, shall determine its actual value, without reference to any prospective enhancement by reason of the construction of any work for which the land is to be taken, and shall not diminish the value by reason of such construction; and in all such cases the value or damages as aforesaid shall be determined by the actual and true value of the land to be taken. On said first day of said term, the said court shall direct judgment to be entered on said report for the amount therein ascertained and determined by said viewers, if no exceptions be taken and filed; but if exception be taken and filed thereto, and when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve free-holders, selected according to law. The right is hereby given to said railroad corporation to object, and its objection shall be sustained, to any juror who may be an owner or interested in land over or through which said rail-

road will pass. The cause, or proceeding, shall be ^{The cause, how tried.} tried as any other cause in said court, and the said viewers, as well as the jury aforesaid, who may try the cause or proceeding, shall, by their award or verdict, as the case may be, ascertain and determine the amounts to be paid by the railroad corporation for the land actually taken, and no more; and the damages to the residue of the tract, if any, may be ^{Damages to land may be compensated for by benefit to residue of land.} offset and compensated for by any peculiar benefit to said residue which may arise by reason of the construction of said railroad or any work necessary for the running and operation of the same.

19. Any such corporation may, by their agents and employees, enter upon and take from any land adjacent to its road, earth, gravel, shale or stone necessary for the construction of said railroad, paying, or securing to be paid, if the owner of such land and the said corporation can agree thereto, the value of such material taken and the amount of damage occasioned thereby to any such land or its appurtenances; ^{May take from any land earth, gravel, shale or stone for construction of road.} and if such owner and corporation cannot agree, then the value of such material, and the damage occasioned to such real estate, may be ascertained, determined and paid, or secured to be paid, in the manner prescribed in section eighteen of this act; but the value of such materials, and the damage to such real estate shall be ascertained, determined and paid or secured to be paid, before such corporation can ^{Value, how ascertained.} enter upon or take the same.

20. Every corporation formed under this act, shall, in addition to the powers herein before conferred, have power:

FIRST. To cause such examination and survey for its proposed railroad to be made as may be necessary ^{May examine and survey route for railroad.} to the selection of the most advantageous route; and for such purpose, by its officers, agents, engineers or employees, may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages which shall be occasioned thereby. ^{May enter upon lands or waters of any person or corporation.}

Voluntary grants of real estate and the right to convey the same.

SECOND. To take and hold such voluntary grants of real estate and other property as shall be made to it, in aid of the construction and use of its railroad, and to sell and convey the same when no longer required for the uses of such railroad, not incompatible with the terms of the original grant.

To purchase real estate and other property necessary for the road, and to convey the same.

THIRD. To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railroad, and the stations and other accommodations necessary to accomplish the object of its incorporation, and to sell and convey the same when no longer required for the use of such railroad.

Width of road.

FOURTH. To lay out its road, not exceeding one hundred feet in width, and to construct the same; and for the purpose of excavations and embankments, to take as much more land as may be necessary for the proper construction, repair and security of the railroad; and to cut down any standing trees that may be in danger of falling upon or obstructing the railroad, making compensation therefor in the manner provided by section eighteen of this act.

Grade or location may be changed.

FIFTH. To change the grade or location of its railroad, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to the public travel, or dangerous or difficult curves or grades, or unsafe or impracticable and unsubstantial grounds or foundations, or for other like reasonable causes.

To construct road along or across any water course, street, highway, road, turnpike or canal.

SIXTH. To construct its railroad across, along or upon any stream of water, water course, street, highway, road, turnpike or canal, which the route of such railroad shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, road, canal or turnpike, thus intersected or touched, to its former state, or to such state as not unnecessarily to have impaired its usefulness, and to keep such crossing in repair. Nothing in this act contained shall be construed to authorize the erection

Not to impair their usefulness.

of any bridge or any other obstruction across or over any stream navigable by steamboats at the place where any bridge or other obstruction may be proposed or placed, so as to prevent the navigation of such stream; nor to authorize the construction of any railroad upon or across any street in any city or incorporated town or village without the assent of the corporation of such city, town or village: Provided, That any company running its railroad through or within half a mile of a town or village within this state containing three hundred or more inhabitants, shall establish a station for the accommodation of trade and travel of such town or village; and provided further, That in case of the construction of said railroad along highways, roads, turnpikes or canals, such railroad shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same, or condemn the same under the provisions of section eighteen of this act; and provided further, that nothing in this act shall be construed to authorize the incorporation of any railroad company, the purpose and effect of which is to connect two other railroads and thereby abandon as through routes any city or town of this state, which is the terminus of either or both of said railroads, without the consent of such city or town.

Bridge across navigable streams not authorized.

Consent of city or town required in certain cases.

Proviso.

Stations to be established at all towns or villages containing more than three hundred inhabitants.

Construction of road along highways, roads, turnpikes and canals.

Consent of lawful authorities required.

Connection of two railroads in certain cases prohibited.

SEVENTH. To cross, at grade, or to cross over or under, intersect, join and unite its railroad with any other railroad now built and constructed, or hereafter to be built and constructed within this state, at any point on its route, and upon the grounds of such other railroad company, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is or shall be hereafter intersected by any new railroad, shall unite with the corporation owning such new railroad in forming

To cross or unite with any other railroad.

In case of disagreement as to compensation and point of connection, how determined.

such intersection and connections, and grant the facilities aforesaid; and, if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossing and connections, the same shall be ascertained and determined in the manner prescribed by section eighteen of this act.

Steam or mechanical power, to convey passengers by.

EIGHTH. To receive and convey persons and property on its railroad by the power and force of steam or animals, or by any mechanical power.

May erect buildings, stations, fixtures and machinery for use of road.

NINTH. To erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for such connections, constructions, transfer, accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation and repair of said railroad, its track, roadway and machinery.

Regulate the time and manner of transporting passengers and property.

TENTH. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject, nevertheless, to the provisions of any law that has been or may be hereafter enacted.

May borrow money and issue bonds, etc.

ELEVENTH. From time to time, to borrow such sums of money as may be necessary for completing, finishing, improving, or operating any such railroad, and to issue bonds, bills of credit or indebtedness and preferred stock, and dispose of the same, for any amount so borrowed, and to mortgage its

May mortgage property and franchises.

corporate property and franchises, to secure the payment of any debt contracted by such corporation for the purposes aforesaid, but the concurrence of the holders of two-thirds in amount of the stock of such corporation, to be expressed in the manner and under all the conditions provided in section fifteen of this act, shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in section two of this act; and the directors of such corporation

Assent of stockholders required.

shall be empowered, in pursuance of any such order or resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of such corporation, at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation.

Bonds convertible into stock.

Limit.

21. The rolling stock and all other moveable property belonging to any such corporation, shall be considered personal property, and shall be liable to execution, and sale, in the same manner as the personal property of individuals.

Rolling stock and moveable property regarded as personal property, and subject to execution and sale.

22. No corporation shall issue any stock or bonds, except for money, labor, property and materials actually purchased, received and applied to the purposes for which such corporation was organized. All stock dividends and other fictitious increase of the capital stock or indebtedness of any such incorporation shall be void.

Issue of stock or bonds except in certain cases prohibited.

Stock dividends void.

23. No corporation shall consolidate its capital stock with any other railroad running a parallel or competing line, without the consent of the legislature, but may merge and consolidate with, lease to, or be leased by, for a term of years any connecting railroad or line of railroad, within or extending into this state, in order to make a continuous line of railroad, to be run and operated without change of cars or break of bulk, and exchange and transfer of freights and of passengers, and upon such terms and conditions as a majority of the stockholders in such companies shall (so to merge and consolidate) instruct and authorize their respective boards of directors to do, or may sell to or purchase such continuous and connecting lines of railroad, upon authorization as aforesaid, and may change or adopt another name for their railroad thus merged, connected and consolidated, by filing in the secretary of state's office such declaration and intention, and by giving sixty days' notice.

Parallel or competing lines shall not consolidate without consent of legislature.

Exception as to continuous line.

May change name.

Notice.

Suits at law not to be invalidated by consolidation of roads.

notice in the newspapers along the line of said railroad prior to such change so to be made: Provided, that such merger, lease, purchase or consolidation of two or more railroads, shall not invalidate any suit at law, claim, dues or demand upon any or either of the said companies, but all such shall be held to be against the company becoming such lessee, purchaser, owner and manager of such consolidated line of railroad. And in no case shall any consolidation take place, except upon sixty days' notice thereof, which notice shall be given in the manner and form as prescribed in section fifteen of this act: Provided, that this section shall not apply to the Baltimore and Ohio railroad and the North-western Virginia railroad, so as to enlarge any powers or privileges which either of said railroads now possess.

Not to apply to Baltimore and Ohio and North-western Virginia railroads.

Report of directors to auditor.

24. The directors of every such corporation shall annually make a report under oath, to the auditor of public accounts of this state and to such other officers as may be designated by law, of all its actings and doings, which report shall include such matters relating to such corporations as may have been or may be hereafter prescribed by law.

Legislature to correct abuses.

25. The legislature shall have power to enact from time to time, laws to prevent and correct abuses and to prevent unjust discriminations and extortions in the rates of freight and passenger tariff, and to establish reasonable maximum rates of charges for the transportation of persons on property on any railroad that may be constructed under the provisions of this act, and to enforce such law by adequate penalties.

Election of directors, and how.

26. In all elections for directors and managers of such railroad corporations, every stockholder shall have the right to vote in person, or by proxy, for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of director

Cumulative voting.

multiplied by the number of his shares of stock, shall equal, or to distribute them, on the same principle, among as many candidates as he may think fit; and such directors or managers shall not be elected in any other manner.

27. That it shall be lawful for the county court or County, city or town subscription to railroad: how authorised. other court or tribunal established in lieu of a county court, or the council or board of trustees of any county, city, or town through, by, or near to which the railroad company shall have been incorporated, to construct a railroad and branches, and likely to be benefitted thereby, to make an order requiring the sheriff or sergeant, and commissioners of election, at a time to Election thereon to be held by commissioners, &c. be designated in such order, not less than one month from the date thereof, to open polls and take the sense of the legal voters of such county, or any district thereof, city or town, on the question whether such county, or district thereof, city or town, shall subscribe to the stock of said company incorporated to construct a railroad through, by or near such county, district, city or town, and by the construction of which, such county, city or town is likely to be benefitted. The said order shall state the amount Order to state amount to be subscribed. proposed to be subscribed, and in case such order be made by the county court, or other court or tribunal established in lieu of a county court of any such county, or the council or board of trustees of any such city or town, the legal voters residing in any district of a county, city or town located in any such counties, as the case may be, shall be entitled to vote upon the question, and the taxable subjects in such town shall be assessed ratably with those of the county as hereinafter provided; and the commissioners of election, who, if there be none otherwise legally Election, how held. appointed, may be designated by such court or council, or board of trustees, after taking an oath in accordance with section five, of article four of the constitution, shall open polls at the various places of

voting in such county, district, city or town, and at the time designated in such order, and shall conduct such election in all respects as is provided by law for holding other elections; and at such election each of said voters who shall approve such subscription, shall deposit a ticket or ballot on which shall be written or printed the words "for the subscription;" and each of said voters who shall be opposed to such subscription, shall deposit a ticket or ballot on which shall be written or printed the words "against the subscription," and, immediately after the closing of the polls, the commissioners of election at the several places of voting in such county, district, city or town, shall count the ballots deposited at such election, and shall make return within four days after such election, to the commissioners of election at the court house, or to the council or board of trustees of such city or town, of the number of votes cast for the subscription, and the number of votes cast against the subscription, and shall also return to and deposit with the clerk of such court, or council, or board of trustees, in separate packages, the ballots for and against such subscription, and it shall be the duty of such commissioners, or council, or board of trustees, to cause the ballots to be counted, to correct the polls, and to ascertain and certify the result of such election to the county court, or other court or tribunal established in lieu of a county court, or council, or board of trustees, and if it shall appear that three-fifths of the votes cast at such election are in favor of the subscription, such commissioners of elections at the court house, or council, or board of trustees, shall forthwith so declare, and when so declared, it shall be the duty of the county court, or other court or tribunal established in lieu of a county court of the county at the first meeting thereafter, or the members of the council or board of trustees of any city or town, to meet on the fifth day thereafter, (Sunday excepted,) to carry out the wishes of said voters.

Return of election;
how made.

Result; how
declared.

28. The county court, or other court or tribunal^{Agent to make subscription-} established in lieu of a county court, councilmen or trustees of any city or town shall appoint an agent or agents, to make the subscription in behalf of such county, district of a county, city or town to the capital stock of the said company, to the amount specified in the order under authority of which said election was held; and the said subscription shall be paid in cash,^{Subscription to be paid in cash or coupon bonds.} or in the coupon bonds of such county, district, city or town, at par; the said bonds to be redeemed^{Time of redemption of bonds.} within thirty-four years, as such county court or other tribunal established in lieu of a county court, councilmen, or trustees of any city or town may elect, and shall bear interest, and the matured coupons shall be received by the authorities of such county, city or town, at par, in payment of all taxes, fines and other like obligations; and if in either of said counties or towns an election has already been held, on the question of such subscription in pursuance of the laws in force at the time such election was held, the same shall in all respects be deemed, and held to be, as valid as if the same had been held under the provisions of this act; and in such case, it shall be the duty of the commissioners of election, or of the council or board of trustees of any city or town, promptly to ascertain the result of such election, and to certify the same to the county court or other tribunal established in lieu of a county court or of the council or board of trustees of any city or town; and if it appear that the majority of the votes cast at such election, required by the laws in force at the time such election was held, were in favor of such subscription, the county court, or other court or tribunal established in lieu of a county court, or the council or board of trustees of such city or town, as the case may be, shall in all respects proceed to act as provided for in the preceding section, as if such election had been held under the provisions of this act: *Provided, That no county, district, city or town within this state, except in such*^{To bear interest.}^{Coupons receivable for taxes and fines.}^{Elections heretofore had made valid.}^{Duty of commissioners, etc. in such case.}^{Provide.}

Indebtedness of county, etc., not to exceed five per centum on value of taxable property.

Provision to be made for payment of indebtedness.

All questions connected with incurring the debt to be submitted to vote.

Levy to pay subscription or loan and interest.

Sinking fund.

To repeat such levy from year to year until paid.

Levy not to exceed one tenth of subscription and interest.

cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax, sufficient to pay, annually, the interest on such debt and the principal thereof, within and not exceeding thirty-four years: And provided, further, That no debt shall be contracted under this section, unless all questions connected with the same shall have been first submitted to a vote of the people, and have received three-fifths of all the votes cast for and against the same.

29. At the time at which the county court, or other court or tribunal established in lieu of a county court, or council or board of trustees of any city or town, makes its levy for such county, city, or town, it shall levy on all the lands and other subjects liable to state tax and county or corporation levy in such county, district, city or town, such tax to pay the amount of such subscription, or of such loan or loans as may be authorized and the interest thereon; or to pay the interest on the bonds of the county, district, city or town so issued, and to create a sinking fund to redeem the principal thereof, (within thirty-four years,) as said county court, or other court or tribunal established in lieu of a county court, or council or board of trustees of any city or town may deem necessary or proper; and from year to year it shall repeat such assessments until the debt and interest be fully paid. But such levy for a year shall not exceed one-tenth of the whole amount of such subscription and the interest thereon.

30. That in case a subscription be made by any such county, district, city or town, the county court, or other court or tribunal established in lieu of a county court of the county, or the council or trustees of such county, city or town, shall levy the necessary tax on the lands and other subjects aforesaid in such city or town, as the case may be, and the collector of county or corporation levies shall collect and account for the levies for this purpose in like manner as the collectors of the levies in the counties are by law required to collect and account for such county levies: Provided, The right to stock in any such incorporated company, subscribed by either of said counties, districts, cities or towns, under the authority of this act, shall vest in such county, city or town; and the county court, or other tribunal established in lieu of a county court of such county, or the council or other authorities of such city or town, shall have power from time to time to appoint proxies to represent the stock in the meetings of the stockholders of the company, and also an agent to collect the dividends on its stock; which dividends, when collected, shall be applied annually in diminiution of the county, district, city or town levy.

Levy; how made and collected.

Proviso.

Right to the stock; how vested.

Appointment of proxies to represent stock, and agent to collect dividends.

Dividends to be applied to annual levy.

31. A bell or steam whistle shall be placed on each locomotive engine which shall be rung or whistled by the engineer or fireman, at the distance of at least sixty rods from the place where the railroad crosses any public street or highway, and be kept ringing or whistling until such street or highway is reached, under a penalty of not exceeding one hundred dollars for each neglect: one half of which shall go to the state and the other to the prosecuting witness; and the corporation owning the railroad shall be liable to any party injured for all damages sustained by reason of such neglect; Provided, that such penalty shall be sued for within three months from the time the cause of action arises and not thereafter. But this section shall not apply to suits now pending.

Bell or whistle on locomotive.

When to be sounded.

Penalty.

Corporation liable.

When enforced.

Exception.

Boards to be erected
at railroad cross-
ings.

How placed.

What painted
thereon.

Exception as to
cities and villages.

Intoxication a mis-
demeanor.

Penalty.

Injury or damages
to railroad or its
property.

Felony.

Punishment of

Murder.

Prosecuting attor-
ney to sue for pen-
alties.

32. Every such corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street where the same is crossed by the railroad on the same level. Said boards shall be elevated so as not to obstruct the travel and be easily seen by travelers; and on each side of said boards shall be painted in legible capital letters "railroad crossing; look out for the locomotive!" But this section shall not apply to streets in cities or villages unless the corporation be required to put up such boards by the officers having charge of such streets.

33. If any person shall, while in charge of a locomotive engine running upon the railroad of any corporation, or while acting as the conductor of any car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars; and any person who shall wilfully or unlawfully do or cause to be done any act or acts whatever, whereby any building, construction or work of any such corporation, or any engines, machines or structures, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons offending shall be guilty of a felony and upon conviction thereof shall be confined in the penitentiary not more than ten years, or fined not more than one thousand dollars, or both, in the discretion of the jury; and if the death of any person occur in consequence of such obstruction, the person creating such obstruction, shall be, on conviction thereof, deemed guilty of murder.

34. All penalties imposed by this act may be sued for by the prosecuting attorney of the county in which said violation arises, and in the name of the state of West Virginia.

35. Every such corporation shall, within a reasonable time after the railroad shall be located cause to be made:

I. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the secretary of state; and also like maps of the parts thereof, located in different counties, and file the same in the office for recording deeds in the county in which said parts of said railroad shall lie, there to remain as of record forever.

Map and profile of road, and land taken to be made.

How filed.

II. A certificate specifying the line upon which it is proposed to construct the said railroad and the gauge, grades and curves.

Certificate as to line, gauge, grade and curves.

36. If any railroad corporation organized under this act, shall not, within two years after its articles of association shall be filed and recorded as required in section two of this act, begin the construction of its road and expend thereon ten per cent. of the amount of its capital, within three years after the date of its organization, or shall not finish its railroad and put it in operation within ten years from the time of filing its articles of association as aforesaid, its corporate existence and powers shall cease.

When work of construction to commence.

Amount to be expended.

When to be completed.

Forfeiture.

37. All existing railroad corporations within this state shall respectively have and possess all the powers and privileges, and be subject to all the duties and liabilities and provisions contained in this act; and all railroad companies that are now constructing their roads may acquire title to lands necessary for that purpose, under the provisions of this act.

Existing railroads entitled to privileges of this act.

Amended
77-1-137

38. All railroad companies organized and constructed under the provisions of this act, may, and shall have, power and authority to receive donations and devise of lands, property and materials, and receive subscriptions to their capital stock, payable in lands, property, materials, works, labour and otherwise, upon such terms and conditions as the directors and owners may agree and determine; and any city,

May receive subscription payable in lands, etc.

Subscription to stock by counties, &c.

town, county, company, corporation or association, may subscribe to the capital stock of any railroad organizing hereunder, in manner and form, and in accordance with the laws of this state and of the municipal laws and requirements of any city, town or county so subscribing; but no city, town, district or county in this state shall make such subscription unless by a vote of three-fifths of the voters thereof, at an election held for that purpose, their consent thereto shall be first had and obtained.

How made.

Assent of voters necessary.

Lateral roads, branches and tramways.

Planes and gravity roads.

Part of road may be operated.

May build bridges for wagons, &c., and collect toll.

May erect and operate telegraph lines.

Loan of credit.

39. Any railroad company organized under this act may build and construct lateral and branch roads, or tramways, and of any gauge whatever, not exceeding fifty miles in length, and may build planes and gravity roads, use and operate any part or portion of their said main line and branch or branches, when completed, the same as though the whole of their said proposed railroad was fully completed; and, in the construction of their bridges across any river or navigable stream, may provide for the passage of wagons and other travel, collecting tolls therefor as prescribed by law; and may erect and operate a telegraph line or lines, with the right to use, control and operate the same along the line of their said railroad and branches, and connecting with any of their said works, offices and improvements.

40. Any railroad company, or any persons or bodies corporate or politic whatever, in or out of this state, heretofore or hereafter incorporated, may, at any time, by means of subscription to the capital stock of any other company, or by the indorsement of each other's bonds, or by an exchange of or guarantee of bonds and stock, or the interest thereon, and of each other, or by a loan of its credit thereto, or otherwise aid and assist such company in the construction of its railroad, works and improvements: Provided, that no such loan, indorsement of, or aid, shall be extended, granted and given, until the con-

Proviso.

sent of two-thirds of the stock held by said companies, respectively, which shall have been organized under the laws of this state, shall be given, at a meeting of the stockholders of such companies held for that purpose; they shall authorize and instruct their board of directors to enter into such agreement.

41. Any railroad company heretofore organized and extending into, and through this state, or that may organize under this act, shall have power and authority to build and construct their line of railroad, branch or branches, through any gorge, defile, causeway, or narrow ravine, along any stream or river, by, over, under, near to, by the side of, or through, any house, out-house, building or inclosure—burial grounds and cemeteries excepted—by paying or securing to be paid for all such, or the damage occasioned thereto, as shall be agreed upon by the company, and the party or parties, owner or owners, such amount or price therefor as shall be mutually agreed upon by and between the parties in interest, and in case they shall fail to agree upon terms of settlement for such damage, their adjustment and settlement shall be made as herein provided.

Authority to build branch railroads.

Through burial grounds and cemeteries excepted.

Damages; how ascertained and determined.

42. All general laws of this state in relation to railroad corporations, and the powers and duties thereof, so far as the same are not inconsistent with the provisions of this act, shall remain in force and be applicable to railroad corporations organized under this act: Provided, that any railroad corporation, or improvement company incorporated by the laws of this state, and organized since the first day of January, 1872, may accept the provisions of this act, and re-organize hereunder without impairing any rights or privileges granted in their original acts of incorporation, subject, however, to the control of the legislature as prescribed by the constitution: Provided, however, that two-thirds of the persons named as incorporators of such companies shall sign articles of

General laws, so far as not inconsistent with this act to apply.

Certain railroad or improvement companies heretofore organized may accept the provisions of this act, and re-organize hereunder.

Provide.

incorporation, and proceed as required in section two of this act, and give notice to all incorporators and stockholders as required in section fifteen of this act, after which such organization shall be held to be the legitimate and only valid organization of such company.

Rights of existing corporations not to be interfered with.

43. Nothing in this act shall be so construed as giving to any company that may be organized under the provisions of this act, the right to take away or interfere with the rights or franchises of any existing legally organized corporation, granted to it by its charter, or any previous law of this state, or which has been legally acquired by such corporation in a legal manner: Provided, that this section shall not be so construed as to apply to corporations chartered since the first day of January, 1872, that may re-organize in accordance with the provisions of section forty-two of this act.

Construction of certain words.

44. Hereafter the words "internal improvement company," and companies "incorporated for the construction of works of internal improvement," shall not be so construed as to apply to associations incorporated for the construction or management of railroads within this state, unless such construction shall have been or shall be expressly stated and set forth by law.

Commencement.

45. This act shall take effect from and after its passage, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

CHAPTER LXXXIX.

AN ACT to amend and re-enact the sixth section of chapter one hundred and fifty-six of the code, in relation to bail in criminal cases.

Approved April 3, 1873.

Be it enacted by the Legislature of West Virginia:

Section amended.

1. That the sixth section of chapter one hundred and fifty-six of the code be amended and re-enacted so as to read as follows:

"6. A justice may let to bail a person who is charged with, but not convicted of, an offense not punishable with death. If the offense be punishable by confinement in the penitentiary, he shall not admit such person to bail in a less sum than one thousand dollars. But a justice shall not admit any person to bail, if bail has been previously refused to such person by any court, judge or justice; nor shall any person confined in jail by an order of commitment in which the amount of bail he is required to give is specified, or where an order has been made by a court or judge, fixing the bail such person is to give, be admitted to bail by a justice in a less sum than is specified in such order. If a justice has refused bail, and the offense is punishable by confinement in the penitentiary, and not with death, the county court of the county in which the offense is charged to have been committed, at any of its terms, other than those held for police and fiscal purposes, or any tribunal created heretofore or hereafter, under the authority of the thirty-fourth section of the eighth article of the constitution, exercising judicial powers in such county, in lieu of a county court, may, in cases in which a judge may not have refused bail, and only when a light suspicion of guilt falls on the accused, admit such person to bail. But a circuit court or a judge thereof, in vacation, may, for good cause shown, admit any person to bail before conviction."

Bail; when allowed and by whom.

When justice refuses bail, county court or other tribunal may admit to bail.

Circuit court.

2. This act shall be in force from its passage.

Commencement.

CHAPTER XC.

AN ACT providing for the examination of persons charged with a felony before the county court.

Approved April 3, 1873.

Be it enacted by the Legislature of West Virginia:

1. Before any person charged with a felony is tried before a circuit court, he shall be examined as

County court to examine.

repealed, 75; 1. 179.

May waive examination.

hereinafter provided, unless by his assent, entered of record in such court, such examination be dispensed with.

How examined.

2. Every such examination shall be had before the county court of the county having jurisdiction of the offense, at one of the terms held for the trial of causes.

Justice committing not to examine.

3. The justice who committed or recognized the accused for examination, shall not be one of the examining court, unless the consent of the accused is given and entered of record.

May continue examination.

4. The court may continue any examination from term to term, so that such continuance, except on the motion of the accused, or by reason of the witnesses on behalf the state being enticed or kept away, or prevented from attending by sickness or some inevitable accident, shall not be beyond the third regular term after the examination was ordered. But, if an examination be commenced at any term, such term may be extended until the examination is completed.

But not beyond three terms.

Term of court may be extended.

Discharge of accused.

5. Upon any such examination, if it appear to the court that there is not probable cause for charging the accused with the offense, he shall be discharged.

Probable cause to charge with felony; prisoner to be remanded for trial.

6. If it appear on the examination of such person that felony has been committed, and that there is probable cause to charge the accused therewith, the court shall remand him for trial in the circuit court having cognizance of the case, take the depositions of all material witnesses on such examination, and require of them, and such as the accused may desire on his behalf, a recognizance for their attendance at the trial.

Recognizance of witnesses.

Bail.

7. Should the court be of opinion that the accused is entitled to bail, it shall let him to bail if he give sufficient bail, or if he do not then give it, shall enter of record that he is entitled to bail, and in what sum, and he may thereafter be admitted to such bail by any justice.

8. When a justice admits such person to bail he ^{Bail.} shall transmit the recognizance to the clerk of the said circuit court, and issue a warrant for the discharge of the person from jail, upon which he shall be discharged therefrom, if detained for no other cause.

9. When a person is remanded as aforesaid by a ^{Recognizances, etc. certified to circuit court.} county court, the clerk thereof shall certify to the clerk of the court in which he is to be tried, copies of all recognizances taken by the said examining court, and to the attorney prosecuting for the state, in the ^{Prosecuting attorney.} court wherein the trial is to be, a copy of the order remanding the accused, and of the deposition taken on the examination, and of any warrant in the case which remains filed in the clerk's office.

10. If the court in which a person is examined as ^{Person discharged not thereafter tried for same offence.} aforesaid discharge him, he shall not thereafter be questioned or tried for the same offence.

11. If the accused be remanded for trial in a court ^{Court or Justices to direct removal to jail of proper court.} whose jail is not the jail of the examining court, the latter court, by its order, or if it fail, any two justices of the county, by their warrant, shall direct the officer of such court to (and he shall) remove the prisoner to the jail of the court in which he is to be tried, and the jailor thereof shall receive and keep him safely until discharged by law. ^{Duty of jailor.}

12. If such examining court be of opinion that the ^{Persons charged with misdemeanor to be tried in county court.} accused is guilty of a misdemeanor for which he ought to be tried in the county court, he shall, unless let to bail, be committed to jail to answer an indictment against him in such court; which indictment may be preferred so soon as there may be a grand jury in said court. The court shall recognize, or cause to be summoned in the case such witnesses and to such time as may appear to it proper.

CHAPTER XCI.

AN ACT to amend and re-enact sections ten, sixteen and seventeen of chapter one hundred and fifty-six of the code, in relation to the examination of parties charged with crime.

Approved April 3, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections ten, sixteen, and seventeen of chapter one hundred and fifty-six of the code be amended and re-enacted so as to read as follows :

Proceedings when
accused fails to
appear.

"10. If the person so recognized do not appear at the time so appointed, the said justice shall certify the recognizance and fact of such default to the county court at its next term; and like proceedings shall be had thereon as on a breach of recognizance for appearance before such court."

When accused
held.

"16. When a justice so considers, that there is sufficient cause for charging the accused with the offense, if the accused be entitled to an examining court, the commitment shall be for examination, and the recognizances be for appearance before such examining court, as provided by law; and if he be not so entitled, unless it be a case wherein it is otherwise specially provided, the commitment shall be for trial, and the recognizances shall be for appearance in the county court, at such time as the case can be proceeded in before such court.

Duty of justice.

The justice shall return to the clerk of such court, as soon as may be, a certificate of the nature of the offense, showing whether the accused was committed or bailed therefor; and the clerk, as soon as may be, shall inform the prosecuting attorney in said court, of such certificate."

Clerk.

Examination; how
certified.

"17. Every examination and recognizance taken under this chapter shall, by the judge or justice taking it, be certified to the clerk of the county court, on

or before the day on which the party charged is to appear in such court. If he fail, he may be compelled to do so by attachment, as for contempt."

CHAPTER XCII.

AN ACT to amend and re-enact section nine of "An act to incorporate the Charleston Bridge Company," passed March 1, 1870.

Approved April 2, 1872.

Be it enacted by the Legislature of West Virginia :

1. That section nine of chapter seventy-one of the acts of 1870, is hereby amended and re-enacted so as to read as follows : Act amended.

"9. If the said company shall not complete the said bridge, ready for the use of the public, by the first day of March, eighteen hundred and seventy-six, then all the privileges, rights and powers hereby granted shall cease and determine. And if, after said bridge shall have been completed, the said company shall fail to keep the same in proper repair for safe passage and use, they shall forfeit and pay the sum of ten dollars for every twenty-four hours the same shall remain out of repair, for the use of the school fund of this state; and shall, moreover, be liable to any party aggrieved or injured thereby, for the amount of actual damages he, she or they may sustain by reason thereof: Provided, That such failure to keep such bridge in repair shall be occasioned by a want of due diligence on the part of said company, or their agents, to repair the same." When bridge to be completed.
Bridges to be kept in repair.
Penalty for failure.
Proviso.

CHAPTER XCIII.

AN ACT to amend and re-enact sections one, two, four and five of chapter one hundred and thirty-one of the code concerning the court dockets, inquiry of damages, trial by jury, and judgments and decrees of the court for money.

Approved April 3, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections one, two, four and five of chapter one hundred and thirty-one of the code be amended and re-enacted so as to read :

Docket how made out.

"1. Before every term of a court the clerk shall make out a docket of the following cases pending, to-wit: first, cases of the state ; and secondly, motions and actions in the order in which the notices of the motions were filed, or in which the proceedings at rules in the actions were terminated, docketing together as new cases, those not on the docket at the previous term. He shall, under the control of the court, set the cases to certain days; and the docket shall be called, and the cases on it tried or disposed of, for the term in that order, except that the court may, for good cause, take up any out of turn."

How called and disposed of.

Chancery dockets to be made out separately.

"2. Before every term of a court the clerk shall make out a separate docket of chancery cases, in which there are motions, and of other chancery cases which have been set for hearing as to any party or which the court is to hear upon a plea, demurrer or exceptions to an answer ; and during each term every cause on said docket shall be called and disposed of."

Court may direct issues in chancery cause to be tried in any other court.

"4. A court wherein a chancery case is pending may direct an issue to be tried in such court. And the circuit court in its discretion may direct such issue to be tried in any other circuit court."

Inquiry of damages

"5. A court may, in any other case before it, have an issue tried or an inquiry of damages made by a jury, and determine all questions concerning the le-

gality of evidence and other matters of law which Province of court on trial. may arise."

2. This act shall be in force from its passage. Commencement.

CHAPTER XCIV.

AN ACT to authorize the auditor to adjust, audit and pay certain delinquent lists.

Approved April 2, 1872.

Be it enacted by the Legislature of West Virginia :

1. That it shall be lawful for the auditor to audit and allow any delinquent list of persons, lands, per- And itter to allow certain delinquents lists. sonal property, or licenses, payable to the state, which may have become delinquent within the last five years, and which may have heretofore been certified and allowed according to law, or which may hereafter, within one year, be so allowed and certified ; and to that end, if any sheriff entitled to the amount of the delinquent list, is indebted to the state to the amount of said list, the auditor shall credit the said sheriff thereunto ; and, if not so indebted, or only partially indebted, he shall issue his warrant on the treasury for the payment of so much thereof as shall be over How paid. and above any indebtedness of said sheriff to the state, or for the whole amount, as the case may be, but no interest shall be allowed thereon. Interest not to be paid.

2. But the delinquent lists aforesaid shall be presented to the county court of the county wherein the sheriff was elected and qualified, and being sworn to in the same manner required for and appertaining to the returned delinquent property, so as to conform in all respects to the returns of property under the laws which may be in force, and if found to be correct by the court, the said court may allow the said delinquent list or lists, as the case may be, and when al- Lists; how certified.

lowed by the court, the clerk thereof shall certify a copy of the same to the auditor, to be audited as hereinbefore provided for.

Commencement.

3. This act shall be in force from its passage.

CHAPTER XCV.

AN ACT to amend and re-enact section two of chapter thirty-five of the code of West Virginia.

Approved April 8, 1873.

Be it enacted by the Legislature of West Virginia:

1. That section two of chapter thirty-five of the code of West Virginia be amended and re-enacted so as to read as follows:

When.

Where.

How and against whom proceedings are to be instituted and conducted.

“2. When the proceeding is at law it may be by motion on thirty days notice, or by action; and whether at law or in equity, it may be in the circuit or county court of the county in which the person liable, or any one of the persons liable resides; or if property or a debt be attached in the circuit or county court of the county where such property may be found or the person owing such debt may reside; and it may be in the name of the state though the liability is created or secured by bond or other instrument payable to, or covenant or contract with, any public officer or other person acting on behalf of the state; and the prosecuting attorney of said county shall institute and prosecute said proceedings, and shall be allowed a reasonable compensation therefor, to be paid out of the treasury of the state upon the certificate of the court trying the cause, or the auditor may direct the attorney general to institute and prosecute said proceedings.”

Commencement

2. This act shall be in force from its passage.

Re-enacted & re-enacted
 1877, p. 164.

CHAPTER XVI.

AN ACT providing for the redemption of forfeited lands.

Approved April 3, 1873.

Be it enacted by the Legislature of West Virginia :

1. That all persons whose lands have been, or shall be forfeited to the state for the failures of the owners to redeem them when purchased by the state at a sale for taxes thereon, or to have them entered on the commissioner's books and assessed with the taxes required by law, or their heirs, assignees or devisees, or any person having a lien or claim thereon either legal or equitable, shall have the right to redeem the said lands at any time before a sale thereof, by paying to the auditor the taxes due the state and interest thereon, and by paying to the sheriff of the county in which said lands may lie, or have been assessed with taxes, all county, township, district and school taxes due and unpaid thereon. The sheriff shall execute to such person duplicate receipts for the money so received by him, one of which shall be filed with the clerk of the county court of the county in which the land lies or was charged with taxes. And to enable such owner or other person to pay such taxes, when the land has been omitted from the assessor's books, he may have the same placed on the proper assessor's books and charged with such omitted taxes and interest. But such redemption shall in no wise affect the right or title of any prior patentee or those claiming under him, or the right of any person claiming said land under the provisions of the constitution, who has paid the taxes properly chargeable to him or them: Provided, that there is evidence of such payment to be found on record in the county wherein such land lies, so as to entitle him or them to the benefit of such forfeiture; but the right of such patentee or those claiming under him or any person

May be redeemed before sale, by payment of taxes and interest.

Duplicate receipts.

How filed.

Omitted land.

Rights of certain claimant not affected.

Proviso.

claiming under the constitution, shall remain valid and firm notwithstanding such redemption.

Money received by
sheriff; how
accounted for.

2. The money received by any sheriff under this act, shall be paid over and accounted for by him as other moneys of a like kind are required by law to be accounted for and paid over.

Commencement.

3. This act shall be in force from its passage.

CHAPTER XCVII.

AN ACT in relation to Capon Springs and Watson-
town, in the county of Hampshire.

Passed April 4, 1873.

Preamble.

WHEREAS, It appears to this legislature that many years ago a certain Joseph Watson, of said county, died in the possession of a tract of land therein; having upon it mineral springs and baths, resorted to then and ever since up to this time, by the public, for purposes of health and recreation; that the title and ownership of said land had, by the will of said Watson, or by an escheat (he being said to have died without heirs,) become vested in the Commonwealth of Virginia, prior to the twelfth day of December, 1787; that on the day last mentioned, an act was passed by the general assembly of Virginia, "for establishing a town in the county of Hampshire," whereby twenty acres of land was vested in trustees, a part to be sold in lots, and other part reserved for public use, and the same established as Watsonstown; that by a subsequent act of the same, passed twenty-third of December, 1803, the former act was amended, and the grant enlarged; that by a further act of the same, passed March, 1849, "the right and title of the commonwealth to ninety-nine acres of land, part of a large tract formerly belonging to Joseph Watson

now deceased, and who, (it is said,) died without heirs, to be laid off adjoining the public lot in which the spring is situated, is hereby vested in the trustees of Watsonstown, and their successors, to be held by them for the public benefit in the same manner, as they now hold the public lot, and with the same power and authority over it as they have power over said public lot," &c.; and that afterwards, fourteenth December, 1849, a further act was passed by the same, concerning Watsonstown, in the county of Hampshire, whereby the previous grants are confirmed and the trustees expressly prohibited, and their successors, from selling or leasing any part of said ninety-nine acres lying east of Bear ridge, but the same shall be held by them for the benefit of the public, in the same manner as they now hold the public lot on which the spring is situated, and with the same power and authority over it as they now have over the said public lot; and

WHEREAS, Said acts of assembly do distinctly Preamble. acknowledge or create a trust for the benefit of the lot owners in said town, of the citizens of the commonwealth of Virginia, and of the public who may resort to said springs for health and recreation, which it would be now unjust to destroy or impair; and

WHEREAS, The said mineral spring, public lot, with Preamble. valuable improvement, bath houses, &c., thereon, and all care of the same have been abandoned, and are disclaimed by the surviving trustees of Watsonstown, and that in fact all of said public property, rights and accommodation, are claimed as their own private property under an alleged purchase by certain individuals from said trustees, about the fourteenth December, 1863; that an alleged public sale thereof hath been made, and conveyance by deed under the pretended authority of an act of a general assembly of the state of Virginia, sitting at Richmond, Virginia, on the twenty-second day of October, 1863, the date

of the passage of said act ; that said pretended purchaser or purchasers hath or have attempted to take possession of said public property and exercised acts under such alleged ownership, to the great injury of the lot owners and public resorting to said spring ; that a bill in chancery in the circuit court of Hampshire county hath been brought by the proprietors of the "Mountain House Hotel," owners of a large number of lots, and of the only public house in Watson town, against said alleged purchasers, in which suit an injunction was awarded to restrain said purchasers from attempting to exercise any acts of ownership over said property ; and

Preamble.

WHEREAS, The said court by a decree entered in said cause at the March term, 1872, considering, That it is not necessary now to decide any of the questions arising in the case relative to the title or particular interest therein of the several parties to this suit, or to decree upon the several questions presented in the cause, all of which it is manifest can be more effectually and satisfactorily done after the necessary and appropriate legislation by the State of West Virginia should be had in reference to said property and appurtenances, and the court desiring and intending in this decree to avoid complicating the subject in questions involved, or in any way impairing, obstructing or restricting any of the parties in making the desired application to the legislature of West Virginia for such appropriate legislation in regard to said property as may be deemed necessary to secure the rights of all parties interested, and promote and secure the end and object of the original grant to trustees as aforesaid, did desire that the injunction heretofore awarded be made perpetual as against the said defendant, G. A. White, and did there direct certain persons who were by said decree appointed special receivers for the purpose to take charge of all the said property, to receive all funds

arising therefrom and render an account thereof to the court.

To provide for the proper execution of the trusts aforesaid for the benefit of said lot holders, and of the citizens of this state and of the public resorting to said springs ; therefore,

Be it enacted by the legislature of West Virginia :

1. That Julius C. Waddle, David Pugh, Billings Trustees appointed Hobart, James D. Armstrong, Samuel Cooper, Asa Cline, Wm. M. Buell, Robert White, Holmes Conrad, William C. Clayton, Alex. Monroe, George W. Dobbin, John P. Poe and William H. Sale, be and they are hereby appointed trustees of Watsontown, in the county of Hampshire, and invested with the title to said mineral spring, public lot and adjacent public lands, with all the rights and authority and duty pertaining thereto, in as full and ample manner as said title, right, authority and duties were in any former trustees of Watsontown, or conferred by all or any of the said acts of the general assembly of Virginia, passed prior to April, 1861.

2. That in case of death, resignation or removal of any of said trustees, vacancies can be filled by the county court until otherwise provided by law. Vacancies; how filled.

3. This act is in no wise to diminish or affect any grants or contracts made by former boards of trustees prior to April, 1861. Prior contracts not affected.

4. The said trustees are hereby authorized and required to have an account taken of all the just debts contracted by trustees of Watsontown for the improvement of the property, and when satisfied that the sums have been fairly expended upon such property, to pay the same out of the revenues from the property not required for its proper preservation and improvement, or should any such debt be found too large to be so liquidated, then said trustees shall re- Account of debts to be taken and paid. How paid.

Report to legisla-
ture.

port to the legislature the amount found to be due in order to special legislation for its payment.

Trustees to defend
title to property
and institute suits
to that end.

5. The trustees are further authorized to defend the title and enjoyment of said property by instituting, defending and prosecuting any and all legal proceedings, proper to that end, in their name as "trustees of Watsontown."

Commencement.

6. This act shall be in force from its passage.

CHAPTER XCVIII.

AN ACT to amend and re-enact chapter ninety-five of the acts of the West Virginia legislature, entitled, "An act for the protection of certain personal representatives," passed February 27, 1872.

Passed April 4, 1872.

Be it enacted by the Legislature of West Virginia:

That chapter ninety-five of the acts of 1872, be amended and re-enacted so as to read as follows:

Personal representa-
tives protected in
certain cases.

"1. No executor, administrator, trustee, curator or guardian, or his sureties, shall be held liable to any one for loss sustained by any collection, investment, sale of property, real or personal, for any moneys or securities which have become worthless and of no effect while such executor, administrator, trustee, curator or guardian was acting under the authority of the government and laws of Virginia, at Richmond, between the first day of May, eighteen hundred and sixty-one, and the first day of May, eighteen hundred and sixty-five: Provided, That such executor, administrator, trustee, curator or guardian, in any action at law or suit in equity against him or his sureties, shall by competent testimony make it appear to the satisfaction of the court or jury, if it be a jury case, that he made such sale, collection or investment in good faith, and with reasonable discretion and with-

Proviso.

out fraud or personal gain, except as to his proper commissions: ^{Proviso.} Provided, further, That such collection, sale or investment shall have been made at a time and place within the lines of the so-called confederate states, and under the laws then and there in force, and which by reason of the military power of the confederate states government, then prevailing, the people in the transaction of their ordinary business affairs were compelled to conform to.

2. This act shall be in force from and after its pas- ^{Commencement.} sage.

CHAPTER XCIX.

AN ACT to provide against the evils resulting from the sale of intoxicating liquors in the State of West Virginia.

Passed April 4, 1873.

Be it enacted by the legislature of West Virginia:

1. It shall be unlawful for any person or persons, ^{Unlawful to sell without license.} by agent or otherwise, without first having obtained a license therefor, to sell in any quantity intoxicating liquors to be drank in, upon or about the building or premises where sold, or to sell such intoxicating liquors to be drank in any adjoining room, building or premises, or other place of public resort connected with said building: ^{Bond.} Provided, That no person shall be granted a license to sell or give away any intoxicating liquors without first giving a bond to the municipality or authority authorized by law to grant licenses, which bond shall be made payable to "the ^{How payable.} State of West Virginia," and be in the penal sum of not less than three thousand dollars, and in the discretion of the court may exceed that sum, with at ^{Penalty of bond.} least two good and sufficient securities, who shall be ^{Freehold security.} freeholders and residents of the county, conditioned

Conditions of bond.

For whose use suit upon bond may be brought.

that they will pay all damages to any person or persons which may be inflicted upon them either in person or property or means of support by reason of the person so obtaining a license, selling or giving away intoxicating liquors; and such bond may be sued and recovered upon for the use of any person or persons or their legal representatives, who may be injured by reason of the selling of intoxicating liquors by the person or his agent so obtaining the license.

Screens, "frosted" windows, &c.

Unlawful to sell behind screens, frosted windows, etc.

2. It shall be unlawful for any person or persons, by agent or otherwise, to sell intoxicating liquors behind screens, "frosted" windows, or any other device designed or intended to protect the seller or buyer from public observation.

Minors.

Unlawful to sell to minors, except upon proper written orders.

3. It shall be unlawful for any person or persons by agent or otherwise, to sell intoxicating liquors to minors, unless upon the written order of their parents, guardians or family physicians, or to persons intoxicated, or to persons who are in the habit of getting intoxicated.

Nuisances; what constitutes.

Places where sold in violation of this act declared common nuisances, and may be abated as such.

4. All cases where intoxicating liquors are sold in violation of this act, shall be taken, held and declared to be common nuisances, and all rooms, taverns, eating houses, bazars, restaurants, drug stores, groceries, coffee houses, cellars, or other places of public resort, wherein intoxicating liquors are sold in violation of this act, shall be shut up, and abated as public nuisances, upon the conviction of the keeper thereof, and shall be punished as herein provided.

Intoxication; to cause; penalties for.

Persons causing intoxication liable.

5. Every person who shall, by the sale of intoxicating liquors, with or without a license, cause the in-

toxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and four dollars per day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication; which sums may be recovered in an action of debt before any court or justice having competent jurisdiction.

To provide for intoxicated person and pay charges.

Charges; how recovered.

Husband, wife, child; liability for injury to.

6. Every husband, wife, child, parent, guardian, employer, or other person who shall be injured in person or property, or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her name, severally or jointly, against any person who shall, by selling or giving intoxicating liquors, have caused the intoxication, in whole or in part, of such person or persons; and any person or persons owning, renting, leasing or permitting the occupation of any building or premises, and having knowledge that intoxicating liquors are to be sold therein, or who having leased the same for other purposes, shall knowingly permit therein the sale of any intoxicating liquors that have caused, in whole or in part, the intoxication of any person shall be liable, severally or jointly, with the person or persons selling or giving intoxicating liquors aforesaid, for all damages sustained, and for exemplary damages; and married women shall have the same right to bring suits and to control the same and the amount recovered as a feme sole; and all damages recovered by a minor, under this act, shall be paid either to such minor or his or her parent, guardian, or next friend as the court shall direct; and the unlawful sale or giving away of intoxicating liquors shall work a forfeiture of all rights of the lessee or tenant, under

Liab. for injuries from intoxicated person.

Right of action.

Owner and tenant of real estate liable.

Exemplary damages.

Married women may sue.

Minors.

Unlawful sale forfeits the right of lessee or tenant.

Suits; how brought.

Proviso.

Landlord may sue upon bond of party licensed, and recover damages incurred.

Property of married woman, etc.

any lease or contract of rent upon the premises where such unlawful sale or giving away shall take place; and all suits for damages under this act may be by any appropriate action in any of the courts of this state having competent jurisdiction: Provided, however, That if the property of the landlord be seized or taken for any fine, forfeiture or amercement, by reason of the unlawful acts of his tenant, arising under the provisions of this act, such landlord may sue upon the bond required by this act to be given and may recover thereon damages to the amount incurred and paid by him, together with his costs. But no property belonging to a married woman, infant or insane person shall be taken or seized under the provisions of this act, and in all such cases the husband, guardian, or committee, as the case may be, shall be pecuniarily and personally liable.

Penalties.

Forfeitures and penalties.

7. For every violation of the provisions of the first, second and third sections of this act, every person so offending shall forfeit and pay a fine of not less than twenty dollars nor more than one hundred dollars, and be imprisoned in the jail of the county not less than ten days nor more than thirty days, and pay the costs of prosecution; and for every violation of the provisions of the third section of this act, every person convicted as the keeper of any of the places therein declared to be nuisances shall forfeit and pay a fine of not less than fifty dollars nor more than one hundred dollars, and be imprisoned in the jail of the county for not less than twenty days nor more than fifty days, and pay the costs of prosecution; and such place or places so kept by such person or persons so convicted shall be shut up and abated upon the order of the court before whom such conviction may be had, until such time as such person or persons keeping such places shall give bond and security to be

approved by said court, in the penal sum of one thousand dollars, payable to the State of West Virginia, conditioned that he, she or they will not sell intoxicating liquors contrary to the laws of this state, and will pay all fines, costs and damages assessed against such keeper or keepers for any violation thereof; and in case of a forfeiture of such bond suit may be brought thereon for the use of any person interested, or for the use of the county, in case of a fine or costs due such county. And the penalties in the nature of fines mentioned in this section may be enforced separately from the imprisonment, before justices of the peace or police magistrates.

Evasions.

8. The giving away of intoxicating liquors, or other Evasion. shift or device, to evade the provisions of this act, shall be deemed and held to be an unlawful selling, within the provisions of this act.

Liability of owner of building or ground; when.

9. For the payment of all fines, costs and damages Fines, costs and damages lien upon real estate, assessed against any person or persons in consequence of the sale of intoxicating liquors as provided in section six of this act, the real estate and personal property of such person or persons of every kind shall be liable, and such fines, costs and damages shall be a lien upon such real estate until paid.

How Penalties may be enforced.

10. The penalty and imprisonment mentioned in the seventh section of this act may be enforced by indictment in any court of record having criminal jurisdiction; and all pecuniary fines or penalties provided in any of the sections of this act, (except the fifth and sixth) may be enforced and prosecuted for before any justice of the peace of the proper county in an action Penalties and forfeitures; how enforced.

of debt, in the name of the State of West Virginia as plaintiff; and in case of conviction, the offender shall be committed to the jail of the county until the judgments and costs are fully paid; and the justice or court in which the conviction is had shall issue a writ of *capias ad satisfaciendum* therefor; and justices of the peace shall also have jurisdiction of all actions arising under the fourth and fifth sections of this act, when the amount in controversy does not exceed one hundred dollars, such actions to be prosecuted in the name of the party injured or entitled to the debt or damages provided for in said sections.

CHAPTER C.

AN ACT to confer additional powers and privileges on the Coal River Railroad Company.

Passed April 4, 1875.

Be it enacted by the Legislature of West Virginia:

May construct road from Kanawha river to Forks of Coal, etc.

1. That the Coal River Railroad Company may construct a railroad from any point on the Kanawha river to the Forks of Coal, in Kanawha county; also from the junction of Marsh and Clear Forks of Big Coal river, in Raleigh county, and from Boone court house, on Little Coal river, in Boone county, to the state line in Mercer or McDowell county, by either or both routes.

From Coal river down Kanawha Valley.

2. That it may construct a railroad from Coal river down the Kanawha valley to a point on the Ohio river, in Mason county.

Extension of privileges.

3. That all the rights, powers and privileges contained in the twenty-third and twenty-fourth sections of chapter fifty-four of the code of West Virginia; and in the seventh section of the charter of the "Guyandotte and Ohio river railroad and Mineral company" be, and the same are hereby conferred on the Coal

River Railroad Company: Provided, however, That Limit as to quantity of land owned, and time it can be held. the company shall not own and hold more than fifty-thousand (50,000) acres of land at any one time; and shall not own and hold any land for a longer time than ten (10) years from the date of the purchase thereof; except such lands as may be necessary for Exception. railroad purposes.

CHAPTER CI.

AN ACT to amend and re-enact chapter one hundred and two of the code concerning bonds on the levy of an execution, etc.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred and forty-two of the code be amended and re-enacted so as to read as follows:

Of forthcoming bonds.

" 1. The sheriff or other officer levying a writ of fieri-facias, or distress warrant, may take from the debtor a bond with sufficient security, payable to the creditor, reciting the service of such writ or warrant, and the amount due thereon, including his fee for taking the bond, commission and other lawful charges, if any, with condition that the property shall be forthcoming at the day and place of sale; whereupon such property may be permitted to remain in the possession and at the risk of the debtor. Sheriff may take bond on levying execution. Condition of bond.

2. If the condition of such bond be not performed, the officer, unless payment be made of the amount due on the execution or warrant (including his fee and charges aforesaid), shall, within thirty days after the bond is forfeited, return it with the execution (if taken on execution) to the clerk's office of the court When condition of bond not performed to be returned with execution to clerk's office.

Clerk's endorsement.

Shall have force of judgment.

Obligors liable.]

to which such execution is returnable, and, if taken on a distress warrant, to the clerk's office of the county court of the county wherein such warrant emanated. The clerk shall indorse on the bond the date of its return and against such of the obligors therein as may be alive. When it is forfeited and so returned, it shall have the force of a judgment, but no execution shall issue thereon under this section.

3. The obligors in such forfeited bond shall be liable for the money therein mentioned with interest thereon from the date of the bond until paid and the costs, the obligee or his personal representative shall be entitled to recover the same by action or motion, after ten days notice.

Defence.

4. In an action or motion on such bond, when it is taken under a distress warrant, the defendants may make defense on the ground that the distress was for rent not due in whole or in part or was otherwise illegal.

Remedy of creditor if bond be quashed.

5. If any such bond be at any time quashed, the obligee besides his remedy against the officer may have such execution on his judgment or issue such distress warrant as would have been lawful if such bond had not been taken.

Upon what execution bond not to be given.

6. No bond for the forthcoming of property taken on an execution on a forthcoming bond nor on an execution or a judgment against a sheriff or other officer or a deputy of any of them or a surety or personal representative of such officer or deputy for money received by any such officer or deputy, by virtue of his office, or against any such officer or his personal representative in favor of a surety of such officer, or against a deputy of any such officer or his surety or his personal representative, in favor of his principal or the personal representative of such principal for money paid or a judgment rendered for a defaulting officer, nor on an execution against an overseer of the

poor or his personal representative, for money received by him as such, nor on any other execution on which the clerk is required by law to endorse that "no security is to be taken."

7. On every execution on which a forthcoming bond is prohibited from being given the endorsement that "no security is to be taken." shall be made by the clerk. What to be endorsed by clerk on such execution.

8. This act shall be in force from its passage." Commencement.

CHAPTER CII.

AN ACT to prevent the discontinuance of causes.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia :

1. That all suits or proceedings that were pending in this state on the thirty-first day of December, 1872, in the name of or against boards of supervisors, or in the name of or for the benefit of any township, and have not been dismissed from the docket of such court because such boards were extinct, shall be proceeded in to determination as if such boards were in existence. Suits to be proceeded with.

2. When any court has dismissed from its docket any such cause, because of the non-existence of such board, it may be re-instated upon such docket, after ten days notice to the adverse party, within two terms if it be in the supreme court of appeals, and four terms if in a circuit court or county court. Causes dismissed may be reinstated upon notice.

3. In any case now pending in a circuit court to review any action of the board of supervisors of any county in which any of the records, ordinances or proceedings of the said boards of supervisors, may be required in such circuit court, any proper process of such court may be directed to the clerk of the county Ordinances and proceedings of supervisors. To whom process directed.

court, or other custodian of such records, ordinances or proceedings requiring the same to be certified to said circuit court.

Commencement.

4. This act shall go into effect on its passage.

CHAPTER CIII.

AN ACT to authorize county courts to make levies in certain cases.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia :

County court to provide for interest on debt of any district or township.

1. In any county in which there is any district or township which has heretofore subscribed, or may hereafter subscribe, the bonds or other evidences of indebtedness of such district or township to aid any work of internal improvement, or for other purposes, the county court of such county shall have authority to lay an annual levy at its regular levy term, on the persons and property of such district or township, sufficient to discharge the interest on such bonds or other evidences of debt as it accrues, and eventually to discharge the principal thereof; and for the purpose of carrying out this provision such county court shall have authority to require any assessor of such county to furnish any information or data necessary to enable such court to determine upon such levy. And for the services of any assessor under this act, the county court shall allow him reasonable compensation.

Levy by court on persons and property.

Assessor to furnish information.

Compensation of assessor.

Commencement.

2. This act shall be in force from its passage.

CHAPTER CIV.

AN ACT to amend and re-enact section five of chapter one hundred and twenty one of the code, concerning notices and motions.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia :

Section amended.

1. That section five of chapter one hundred and twenty-one of the code be amended and re-enacted so as to read as follows :

"5. In the case of any bond taken by an officer, or given by a sheriff or constable, and returned to or filed in the office of the clerk of the county court, the circuit court, or county court of the county, may on motion of any person give judgment for so much money as he is entitled by virtue of such bond, to recover by action."

Remedy by motion on certain bonds given by officers.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CV.

AN ACT to provide for making deeds to purchasers for delinquent lands purchased at sheriff's sales.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the clerks of the several county courts shall have authority, and they are hereby required to make to all persons who have heretofore become purchasers of delinquent lands, at sales thereof made by sheriffs for taxes thereon, or to the heirs, assigns or devisees of such purchasers who shall show themselves entitled to such deeds, as recorders were heretofore empowered and required to do, except where the clerk of the county court is himself the purchaser, the deed shall be made to him or his representatives by the clerk of the circuit court of the county in which the lands were sold.

Clerk of county court to execute deed.

Clerk of circuit court to make deed in certain cases.

2. All deeds made under the authority of the preceding section shall be valid and effectual to pass the title to any such lands to the purchasers thereof, their heirs, assigns or devisees.

Deeds valid.

3. This act shall be in force from its passage.

Commencement.

CHAPTER CVI.

AN ACT to amend and re-enact section three of chapter seventy-four of the code concerning acts valid between parties, but void as to creditors or purchasers.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section three of chapter seventy-four of the code be amended and re-enacted, so as to read as follows :

“3. Where any loan of goods or chattels is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained five years without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation is pretended to have been made of a use of property by way of condition, reversion, remainder or otherwise, in goods or chattels, the possession whereof shall have so remained in another as aforesaid, the absolute property shall be taken to be with the possession, and such loan, reservation or limitation void as to creditors of, and purchasers from, the person so remaining in possession, unless such loan, reservation or limitation, be declared by will, deed or other writing, duly recorded. And if any sale be made of goods and chattels reserving the title until the same is paid for, or otherwise, and possession be delivered to the buyer, such reservation shall be void as to creditors of, and purchasers without notice from, such buyer, unless a notice of such reservation be recorded in the office of the clerk of the county court of the county where the property is.”

Loans and reservations as to goods and chattels after five years, without demand, void as to creditors of, and purchasers from, person in possession, unless recorded.

Commencement.

2. This act shall be in force from its passage.

CHAPTER CVII.

AN ACT to amend and re-enact sections two, three and eighteen of chapter fifty-four of the code, concerning the incorporation of joint stock companies without special charters.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections two, three and eighteen of chapter fifty-four of the code be amended and re-enacted, so as to read as follows :

"2. Such companies may be incorporated for the following purposes :

I. For manufacturing, mining or insuring ;

II. For constructing lines of magnetic telegraph, and carrying on the business properly pertaining to telegraph companies ;

For what purpose
may be formed.

III. For establishing hotels, springs, companies, gas works, water works, cemeteries or homestead and building associations, and transacting the business properly pertaining thereto ;

IV. For universities, colleges, academies, seminaries, schools or institutes, for the purpose of teaching any branch or branches of useful information or learning or promoting religion, morality, military science and discipline, or the diffusion of knowledge, including library companies and literary and scientific associations ;

V. For benevolent associations, societies and orders, including orphan, blind, and lunatic asylums and hospitals, lodges of free and accepted masons, independent order of odd fellows, improved order of red men, sons of temperance, good templars, knights of Pythias, and all other associations, societies and orders of like character ;

VI. For gymnastic purposes ;

VII. For the construction of works of internal improvement, other than railroads, and operating the same ;

VIII. And for any other purpose or business useful to the public, for which a firm or co-partnership may be lawfully formed in this state."

Now construed.

"3. But this chapter shall not be construed to authorize the incorporation of a bank of circulation, or any church or religious denomination, or of any company the object or one of the objects of which may be to purchase lands and resell the same for profit."

Fee of secretary of state.

"18. The secretary may charge a fee of four dollars for every such certificate issued by him, and for recording the original, or issuing a certified copy, a fee of fifty cents, or in lieu thereof fifteen cents for every hundred words; which fees shall be paid at the time the service is rendered by the person at whose instance it was done."

Commencement.

2. This act shall be in force from its passage.

CHAPTER CVIII.

AN ACT making appropriations of public money to pay members and officers of the legislature, and for salaries of the officers of the government, in pursuance of the forty-second section of the sixth article of the constitution.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia :

Fund to pay members and officers of legislature and salaries of officers of government.

1. That so much of the public taxes and arrears of taxes, and all other sources of revenue which have been received into the public treasury since the first day of October, 1872, and which may be received therein prior to the first day of October, 1874, which may be necessary for the pay of members and officers of the legislature, and for salaries for the officers of the government, shall constitute a fund, according to the forty-second section of article six of the constitution. And no money belonging to any fund shall be

taken for any other purpose than that for which it No other fund shall be taken for the purpose. has been or may be appropriated or provided. And to that end there shall be and is hereby appropriated out of the fund from taxation and other sources of revenue, a sum sufficient to pay the following charges, payable out of the treasury during the fiscal years ending with the thirtieth day of September, 1873, and the thirtieth day of September, 1874, as follows :

FIRST. For the fiscal year ending the thirtieth day Fiscal year. of September, 1873.

LEGISLATIVE DEPARTMENT.

Senate.

To pay mileage allowed to members of the senate Mileage of senators. for the session commencing on the nineteenth day of November, 1872, one thousand one hundred and one dollars and eighty cents.

To pay the per diem compensation of the twenty-four members of the senate, from the nineteenth of November, 1872, to the seventh of April, 1873, Per diem of senators twelve thousand, eight hundred and fifty-three dollars and one cent.

To pay the per diem compensation to the officers, Per diem and mileage of officers etc., of the senate. clerks of committees, pages and messenger, and their mileage, where mileage is allowed, to-wit: per diem, seven thousand two hundred and ninety-seven dollars; mileage, two hundred and sixty-eight dollars; seven thousand five hundred and sixty-five dollars.

House of Delegates.

To pay mileage of the sixty-five members of the house of delegates for the session of the legislature Mileage of delegates. commencing on the nineteenth of November, 1872, three thousand seven hundred and twenty-six dollars and twenty cents.

To pay the per diem compensation of the members Per diem of delegates. of the house of delegates for the session commencing on the nineteenth of November, 1872, to the seventh

of April, 1873, thirty-six thousand five hundred and forty-three dollars.

Per diem and mileage of officers, etc., of house of delegates.

To pay per diem compensation to the officers, clerks of committees and pages; and their mileage where it is allowed, to wit: per diem, ten thousand seven hundred and twenty-five dollars; mileage, four hundred and ninety-four dollars and ninety cents; eleven thousand two hundred and nineteen dollars and ninety cents.

EXECUTIVE DEPARTMENT.

Governor.

Governor.

To pay the salary of the governor for five months and four days at the rate of two thousand dollars per year, and for six months and twenty-six days at two thousand seven hundred dollars per annum; two thousand four hundred dollars and fifty-five cents.

Secretary of State.

Secretary of state.

To pay the salary of the secretary of state for five months and four days, at the rate of thirteen hundred dollars per annum, amounting to five hundred and fifty-six dollars and eleven cents; and for six months and twenty-six days at one thousand dollars per annum, amounting to five hundred and ninety-two dollars and three cents, aggregating one thousand, one hundred and forty-eight dollars and fourteen cents.

Auditor.

Auditor.

To pay the salary of the Auditor, at the rate of fifteen hundred dollars per annum, for five months and four days, amounting to six hundred and forty-one dollars and thirteen cents; and for six months and twenty-six days at two thousand dollars per annum, amounting to one thousand one hundred and forty-five dollars and sixteen cents, aggregating, one thousand seven hundred and eighty-six dollars and twenty-nine cents.

Treasurer.

To pay the salary of the treasurer, one thousand Treasurer.
four hundred dollars.

Librarian.

To pay the salary of the librarian, at the rate of Librarian.
six hundred dollars per annum, from the first of October, 1872, to the fourth of March, 1873, amounting to two hundred and fifty-six dollars and sixty-one cents; and from the fourth of March, 1873, to the first of October, 1873, at the rate of seven hundred and fifty dollars, amounting to three hundred and ninety-one dollars and twenty-five cents, aggregating six hundred and forty-seven dollars and ninety-one cents.

Janitor.

To pay the salary of the janitor, one thousand dol- Janitor.
lars; to pay extra compensation allowed by law during the session of the legislature at three dollars per diem, four hundred and twenty dollars.

JUDICIAL DEPARTMENT.

To pay the salaries of the three judges of the su- Judges supreme
court of appeals.
preme court of appeals for three months, and four judges for nine months, the former at two thousand per annum, and the latter at two thousand two hundred and fifty dollars, per annum; eight thousand, seven hundred and fifty dollars.

To pay the salary of the clerk of the supreme court Clerk.
of appeals, one thousand dollars.

To pay salary of former reporter of the court of Reporter.
appeals to fourth of March, 1873, four hundred and twenty-seven dollars and seventy-five cents.

To pay the salaries of the judges of the several Circuit judges.
circuit courts, eighteen thousand dollars.

To pay salary of the attorney general from the first Attorney general.
day of October, 1872, to the fourth day of March,

1873, four hundred and twenty-seven dollars and seventy-eight cents.

To pay the salary of the attorney general and ex-officio reporter of the court of appeals, from fourth of March, 1873, to thirtieth of September, 1873, at the rate of one thousand and three hundred dollars per annum, seven hundred and forty-seven dollars and forty-eight cents.

Fiscal year. **SECONDLY.** For the fiscal year ending the thirtieth day of September, 1874:

EXECUTIVE DEPARTMENT.

Governor. To pay the salary of the Governor, two thousand seven hundred dollars.

Secretary of State.

Secretary of state. To pay the salary of the secretary of state, one thousand dollars.

Auditor.

Auditor. To pay the salary of the auditor, two thousand dollars.

Treasurer.

Treasurer. To pay the salary of the Treasurer, one thousand and four hundred dollars.

State superintendent of free schools.

State superintendent of free schools. To pay salary of state superintendent of free schools, to be paid out of the general school fund, one thousand five hundred dollars.

Attorney general.

Attorney general. To pay the salary of the attorney general, and ex-officio reporter of the court of appeals, one thousand three hundred dollars.

Librarian.

To pay the salary of the librarian, seven hundred and fifty dollars.

Janitor.

To pay the salary of the janitor, one thousand dollars.

JUDICIAL DEPARTMENT.

To pay the salaries of the judges of the court of appeals, nine thousand dollars.

To pay the salary of the clerk of the court of appeals, one thousand dollars.

To pay the salaries of the nine judges of the circuit courts, eighteen thousand dollars.

Be it further enacted, that all moneys hereby appropriated to be used within said fiscal year, and not drawn within the period of said fiscal years, ending respectively on the thirtieth day of September, 1873, and the thirtieth day of September, 1874, shall not be thereafter drawn without authority of law; but to pay the same, and every part thereof, the auditor is hereby authorized and required, when properly demanded, to issue his warrant on the treasury in the same manner he would be required to if each item of expenditure was directed to be paid to a creditor by name; and no money shall be drawn from the treasury beyond the appropriations hereby made, unless the same is authorized by the constitution, or by some general law not provided for in this act.

2. This act shall be in force from its passage.

Money not drawn within fiscal year not afterwards drawn without authority of law.

Auditor to issue warrant.

No money beyond appropriation to be drawn.

CHAPTER CIX.

AN ACT providing in what county suits may be brought.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia:

1. Any action at law or suit in equity, except where it is otherwise specially provided, may be brought in the circuit or county court of any county:

Suits may be brought in circuit or county court.

*referred
- ch. 197*

Where defendant
resides.

FIRST. Wherein any of the defendants may reside ; or,

As to corporations,

SECONDLY. If a corporation be a defendant, wherein its principal office is, or wherein its mayor, rector, president or chief officer resides ; or,

As to land.

THIRDLY. If it be to recover land subjected to a debt or be against a debtor who resides without, but has estate or debts due him within, the state wherein such land, estate or debts or any part thereof may be.

Commencement.

2. This act shall be in force from its passage.

CHAPTER CX.

AN ACT to amend and re-enact sections two and fifteen of chapter one hundred and fifty-nine of the code, concerning trial and its incidents.

Approved April 5, 1873.

Be it enacted by the Legislature of West Virginia:

Sections amended.

That sections ten and fifteen of chapter one hundred and fifty-nine of the code be amended and re-enacted so as to read as follows :

Proceedings in
cases of persons
alleged or found
to be insane.

“ 10. If a court in which a person is indicted for a criminal offense, see reasonable ground to doubt his sanity at the time at which but for such doubt he would be tried, it shall suspend the trial until a jury inquire into the fact of such sanity. Such jury shall be impaneled at its bar. If the jury find the accused to be sane at the time of their verdict they shall make no further inquiry, and the trial in chief shall proceed. If they find that he is insane they shall inquire whether he was so at the time of the alleged offense. If they find that he was so at that time the court may dismiss the prosecution, and either discharge him or to prevent his doing mischief, remand him to jail, and order him to be removed thence to the hospital for the insane. If they find he was not so at

that time, the court shall commit him to jail, or order him to be confined in said hospital until he is so restored that he can be put upon his trial."

"15. A circuit court may, on the petition of the accused and for good cause shown order the venue of the trial of a criminal cause in such court to be removed to some other county." Change of venue.

2. This act shall be in force from its passage. Commencement

CHAPTER CXI.

AN ACT making appropriations of public money to pay general charges upon the treasury.

Approved April 7, 1873.

Be it enacted by the Legislature of West Virginia :

1. That so much of the public taxes, and arrears of taxes, and all other sources of revenue, which have been received into the public treasury since the first day of October, 1872, and which may be received therein prior to the first day of October, 1874, which may be necessary to pay claims and charges upon the treasury, other than salaries of the officers of government, and pay of members and officers of the legislature, shall constitute a fund for that purpose. No money belonging to any fund shall be taken for any other purpose than that for which it has been, or may be, appropriated or provided. And to that end there shall be, and is hereby appropriated, out of the fund from taxation and other sources of revenue, a sum sufficient to pay the following charges, payable out of the treasury during the fiscal years ending with the thirtieth day of September, 1873, and the thirtieth day of September, 1874, as follows:

General charges upon treasury.

Money belonging to any fund not to be taken for any other purpose.

First. For the fiscal year ending the thirtieth day of September, 1873. Fiscal year

LEGISLATIVE DEPARTMENT.

- Printing.** 2. To pay for printing journals, bills, resolutions and acts, eleven thousand, five hundred and ninety-five dollars and seventy cents.
- Arrears.** To pay arrearages omitted by legislature assembled in January, 1872, four hundred and ten dollars.
- Contingent expenses.** Contingent expenses for the session commencing nineteenth November, 1872, and ending seventh April, 1873, and such other sums as may be properly expended, one thousand, three hundred and eighty-six dollars and forty-five cents.
- Keeper rolls.** To the keeper of the rolls, three hundred dollars.

JUDICIAL DEPARTMENT.

- Mileage.** 3. To pay the mileage allowed by law to the three judges of the supreme court of appeals, whose terms of office expired on the thirty-first of December, 1872, five hundred and ninety-five dollars.
- Mileage.** To pay the mileage allowed by law to the four judges of said court for necessary travel to attend the sessions prescribed by law, seven hundred dollars.
- Court officers.** To pay allowances to the several officers of the supreme court of appeals and contingent expenses of said court, and the contingent expenses of the circuit courts, to be certified by the courts respectively, according to law, two thousand and two hundred dollars.
- To pay for publishing the docket of the supreme court, as prescribed by law, (to be allowed and certified by the supreme court of appeals) not exceeding, three hundred dollars.
- Mileage.** To pay for mileage of the judges of the circuit courts, one thousand and four hundred dollars.
- Furniture for attorney general's office.** To provide furniture for the office of the attorney general, to be paid out of the contingent fund hereinbefore appropriated and not in addition thereto, (to be expended if necessary,) two hundred dollars.

To pay for seals for clerks of county courts, four ^{Seals.}
hundred and fifty dollars.

EDUCATIONAL DEPARTMENT.

University.

4. To pay current and contingent expenses of the ^{Contingent and current expenses.}
West Virginia University for the year ending June
20, 1873, seven thousand and eighty dollars.

To pay insurance on university buildings, two hun- ^{Insurance.}
dred and fifty dollars.

To pay expenses of regents visiting university, ^{Regents.}
three hundred and fifty dollars.

To pay for repairs, improvements and construction ^{Repairs and im-}
of buildings at the university, nine thousand dollars. ^{provements.}

The appropriations for the university shall be paid ^{How paid.}
upon the order of the executive committee of the uni-
versity, except the appropriation for construction,
which shall be so paid only when authorized by the
regents, and also except expenses of regents which
shall be paid upon the order of said regents.

Normal schools.

To pay teachers in Marshall college, three thousand ^{Marshall college.}
five hundred dollars.

To pay teachers in Fairmont normal school, two ^{Fairmont normal}
thousand dollars. ^{school.}

To pay teachers in West Liberty normal school, ^{West Liberty normal}
two thousand dollars. ^{school.}

To pay teachers in Glenville normal school, two ^{Glenville normal}
thousand dollars. ^{school.}

To pay teachers in Shepherdstown normal school. ^{Shepherdstown}
two thousand dollars. ^{normal school.}

To pay expenses of normal schools (each one hun- ^{Expenses of nor-}
dred dollars), five hundred dollars. ^{mal schools.}

To pay expenses of board of regents visiting nor- ^{Expenses of}
mal schools, four hundred dollars. ^{regents.}

EXECUTIVE DEPARTMENT.

*Civil contingent fund.***Contingent fund.**

5. To pay, upon the order of the governor, directed to the auditor, all expenses in the execution of any law for which the legislature has made no appropriation. And herein shall be included all record books, blanks, stationery and postage for the governor, auditor, treasurer, including a safe for the treasurer's office; secretary of state, attorney general and librarian, to be paid upon the requisition of said officers, ten thousand dollars.

*Salaries of clerks.***Secretary to governor.**

6. To pay a salary of the private secretary of the governor, one thousand dollars.

Clerk to secretary of state.

To pay salary of the clerk in the office of the secretary of state, one thousand dollars.

Clerks in auditor's office.

To pay salaries of four clerks in the auditor's office, the first clerk to receive one thousand and five hundred dollars per annum, and the three other clerks to receive one thousand and one hundred dollars each per annum, amounting to four thousand and eight hundred dollars.

Clerk in treasurer's office.

To pay the salary of the clerk in the treasurer's office, one thousand dollars.

Clerk in state superintendent of free schools' office.

To pay the salary of the clerk in the office of the state superintendent of free schools, to be paid out of the general school fund, one thousand dollars.

*Capitol Building Expenses.***Cases and drawers in secretary of state's office.**

7. For cases and drawers in the secretary of state's office, not exceeding three hundred dollars; to be paid out of the contingent fund hereinbefore provided for, and not in addition thereto, to be expended under direction of the secretary of state.

How paid.**Gas, ice, water etc.**

To pay for gas, ice, water and other necessary charges, to take care of and preserve the public

grounds and buildings, to be paid out of the contingent fund hereinbefore provided and not in addition thereto, two hundred dollars. Care of public grounds.
How paid.

To pay for fuel to be used by the janitor, to be paid out of the contingent fund hereinbefore appropriated, and not in addition thereto, three hundred dollars. Fuel; how paid.

To pay for policy of insurance on capitol building and state library, to be paid out of the contingent fund hereinbefore provided, and not in addition thereto, to be paid upon the requisition of the officers having those matters in charge, six hundred dollars. Insurance on capitol,
How paid.

Public Printer.

8. To pay for printing books, blanks for executive business, assessor's books and forms for assessing property, stationery and public printing for all departments before the fourth day of March, 1873, seven thousand and eight hundred dollars. Public printing.
Blank books and stationery.

Printing by contract.

10. To pay for printing and binding acts, journals and other public printing and services, including paper and all else necessary, and included in the contract, made according to law, for public printing, whose claim after having been verified by the affidavit of the printer or contractor shall be paid according to law, not exceeding eight thousand, two hundred and fifty dollars. Printing by contract.
How paid.

CRIMINAL DEPARTMENT.

Criminal charges.

11. To pay charges authorized by law, and properly approved by the courts and certified; for the suppression of crime and in the execution of criminal laws, and for the support of persons charged with or convicted of crime, thirty thousand dollars. Criminal charges.

Penitentiary.

- Superintendent.** 12. To pay salary of superintendent of penitentiary, one thousand and five hundred dollars.
- Clerk.** To pay salary of clerk of penitentiary, nine hundred dollars.
- Commissary.** To pay salary of commissary of penitentiary, nine hundred dollars.
- Support of convicts.** To support convicts in the penitentiary, to be paid and disbursed upon the order of the board of directors, eighteen thousand dollars.
- Guards.** To pay for guard of criminals confined in the penitentiary, ten thousand dollars.
- Repairs and construction.** To pay for repairs and construction of penitentiary wall and buildings, to be drawn and disbursed under the order of the board of directors, twenty-five thousand dollars.
- Arrearages to guards.** To pay deficiency in last year's appropriation for guards, three thousand seven hundred and two dollars.
- Arrearages for support of convicts.** To pay deficiency in last year's appropriation for the support of convicts in the penitentiary, two thousand seven hundred and forty-two dollars and fifty cents.

CHARITABLE INSTITUTIONS.

Hospital for the insane, at Weston.

- To pay officers and employees.** 13. To pay the salaries of officers and employees; the clothing, medicine, and subsistence of the lunatics confined in the West Virginia hospital for the insane, at Weston, estimated by the superintendent and to be paid on the order of the board of directors, thirty-nine thousand two hundred and eight dollars.

Construction of hospital building.

- Construction.** 14. To pay for the further construction of West Virginia hospital building, to be paid on the orders of the directors of said institution, forty thousand dollars.

To fence, repair and improve hospital farm and ^{Repair of farm.} property, one thousand dollars.

To pay arrearages for transportation of patients, ^{Arrearages for transportation.} one thousand two hundred dollars.

To pay for transportation during the current year, ^{Transportation.} two thousand five hundred dollars.

Lunatics in jail.

15. To pay jailor's fees authorized by law for the ^{Lunatics in jails.} subsistence, clothing and support of lunatics confined in the jails, thirteen thousand dollars.

Institution for the deaf, dumb and the blind.

16. To pay current expenses for the support of the ^{Current expenses.} institution of the deaf, dumb and the blind, at Romney, to be paid on the order of the board of regents, twenty-five thousand dollars.

To pay insurance on building of the institute for ^{Insurance.} the deaf, dumb and the blind, three hundred dollars.

To pay for necessary furniture for said institution, ^{Furniture.} one thousand dollars.

To pay for repairs and construction of building, ^{Repairs and construction.} nine thousand dollars.

CIVIL ADMINISTRATION.

Assessors.

17. To pay the several assessors of the state for ^{Births and deaths.} listing births and deaths, and for other services required by law, one hundred dollars.

To pay for enrolling militia in the year 1872, one ^{Enrolling militia.} thousand one hundred and twenty-six dollars and thirty-five cents.

Over-paid taxes.

18. To return money paid into the treasury in ^{Overpaid taxes.} excess of indebtedness, five thousand dollars.

Erroneous Assessments.

Erroneous assessments.

18. To pay erroneous assessments in pursuance of orders of exoneration, one thousand dollars.

Return of county taxes received by auditor.

County taxes returned.

19. To return to counties the amount of levies received by auditor and directed to be repaid, eighteen thousand dollars.

Agents.

Agents and attorneys.

20. To pay commissions to agents and attorneys for the collection of debts due from defaulting officers on so much as shall have been paid into the treasury, one thousand dollars.

Civil Suits.

Civil suits.

21. To pay fees in civil suits on behalf of the state in the collection of taxes and claims, five hundred dollars.

West Virginia Reports.

Printing supreme court report.

22. To pay for printing and binding the fifth volume of West Virginia Reports, two thousand and three hundred dollars.

Presidential Electors.

Presidential electors.

23. To pay expenses of presidential electors, one hundred and ninety-two dollars.

Contested elections.

Costs of contested elections.

24. To pay costs of contested elections of judges of circuit court, six hundred dollars.

FOR FISCAL YEAR. 1874.

Fiscal year.

SECONDLY. For the fiscal year ending the thirtieth day of September, 1874,

JUDICIAL DEPARTMENT.

26. To pay the mileage allowed by law to the four judges of the supreme court of appeals for necessary travel to attend the sessions prescribed by law, four hundred dollars. Mileage.

To pay allowances to the several officers of the supreme court of appeals and contingent expenses of said court, and the contingent expenses of the circuit courts, two thousand dollars. Court officers.

To pay for publishing the docket of the supreme court, as prescribed by law, not exceeding three hundred dollars, to be allowed and certified by the supreme court of appeals. Docket supreme court.

To pay for mileage of judges of circuit courts, one thousand four hundred dollars. Mileage.

EDUCATIONAL DEPARTMENT.

University.

28. To pay for repairing and construction of buildings at the university, twelve thousand dollars. Repair and construction.

To pay current expenses of university for year ending June 20, 1874, seven thousand and eighty dollars. Current expenses.

To pay insurance on university buildings, two hundred and fifty dollars. Insurance.

To pay expenses of regents visiting university, three hundred and fifty dollars. Regents.

The appropriations for the university shall be paid upon the order of the executive committee of the university, except the appropriation for construction, which shall be so paid only when authorized by the regents, and except also the expenses of regents, which shall be paid upon the order of said regents. How appropriation paid.

EXECUTIVE DEPARTMENT.

Civil Contingent Fund

29. To pay, upon the order of the governor, direct- Civil contingent fund.

ted to the auditor, all expenses in the execution of any law for which the legislature has made no appropriation. And herein shall be included, all books, blanks and stationery and postage for the governor, auditor, treasurer, secretary of state, state superintendent of free schools, attorney general and librarian, including express charges, to be paid upon the requisition of said officers, ten thousand dollars.

Salaries of Clerks.

Salaries of clerks
in the executive
offices.

30. To pay the salary of the private secretary of the governor, one thousand dollars;

To pay the salary of the clerk in the office of secretary of state, one thousand dollars;

To pay salaries of four clerks in the auditor's office, the first clerk to receive one thousand five hundred dollars, per annum; the three other clerks one thousand one hundred dollars each, per annum, amounting to four thousand eight hundred dollars;

To pay salary of clerk in the treasurer's office, one thousand dollars;

To pay the salary of the clerk in the office of the state superintendent of free schools, to be paid out of the general school fund, one thousand dollars.

Capitol Building expenses.

Gas, ice, water, etc,
and care of public
grounds and
buildings.

How paid,

31. To pay for gas, ice, water and other necessary charges; to take care of and preserve the public grounds and buildings, to be paid out of the contingent fund hereinbefore provided, and not in addition thereto, two hundred dollars.

Fuel.

How paid.

32. To pay for fuel to be used by the janitor, to be paid out of the contingent fund hereinbefore provided, and not in addition thereto, three hundred dollars.

Insurance on capitol
building and
library.

How paid.

33. To pay for policy of insurance on capitol building and state library, to be paid out of the contingent fund hereinbefore provided, and not in addition thereto, six hundred dollars.

All such capitol building charges are to be paid upon the requisition of the officers having those matters in charge.

Public Printing

34. To pay for printing and other services authorized by law, and materials furnished, and all else necessary and included in the contract made according to law for "public printing," whose claim after having been verified by the affidavit of the printer or contractor, shall be paid according to law, not exceeding ten thousand dollars. Printing.

CRIMINAL DEPARTMENT.

Criminal charges.

35. To pay charges authorized by law, and properly approved by the courts and certified; for the suppression of crime and in the execution of criminal laws, and for the support of persons charged with or convicted of crime, thirty-one thousand dollars. Criminal charges.

Penitentiary.

36. To support convicts in the penitentiary, to be paid and disbursed upon the order of the board of directors, eighteen thousand dollars. Support of convicts.

To pay for guards of criminals confined in the penitentiary, ten thousand dollars. Guards.

To pay for repairs and construction of penitentiary building, to be drawn and disbursed under the order of the board of directors, twenty-five thousand dollars. Repairs and construction.

CHARITABLE INSTITUTIONS.

Hospital for the insane at Weston.

37. To pay the salaries of officers and employees; the clothing, medicine and subsistence of the lunatics confined in West Virginia hospital for the insane General expenses.

at Weston, estimated by the superintendent, to be paid on the order of the board of directors, **fifty-two** thousand dollars.

Construction for hospital building.

Construction of buildings.

38. To pay for the further construction of **hospital** building, to be paid on the orders of the directors of said institution, **forty** thousand dollars.

Transportation.

To pay for transportation of patients during the current year, **two thousand and five hundred** dollars.

Lunatics in jail.

Support of lunatics in jail.

39. To pay jailor's fees authorized by law for **sub-**sistence, clothing and support of lunatics confined in jails, **seven** thousand dollars.

Institution for the deaf, dumb and blind.

Current expenses.

40. To pay current expenses for the support of the institution of the deaf, dumb and the blind, at **Rom-**ney, to be paid on the order of the board of regents, **twenty-five** thousand dollars.

Insurance.

To pay insurance on building, **three hundred** dol-lars.

To complete buildings, heat the same and enclose grounds, **five thousand** dollars.

To buy furniture, **one thousand** dollars.

CIVIL ADMINISTRATION.

Assessors.

Assessors.

41. To pay the several assessors of the state, for listing births, marriages and deaths; and for other services required by law, **one hundred** dollars.

Over-paid taxes.

Overpaid taxes

42. To return money paid into the treasury in ex-cess of indebtedness, **five thousand** dollars.

Erroneous assessments.

43. To pay erroneous assessments of taxes in pursuance of orders of exoneration, one thousand dollars. Taxes refunded.

Return of county taxes received by auditor.

44. To return to counties the amount of levies received by auditor and directed to be re-paid, twelve thousand dollars. County taxes refunded.

Agents.

45. To pay commissions to agents and attorneys for the collection of debts due from defaulting officers, on so much as shall have been paid into the treasury, one thousand dollars. Agents and attorneys.

Civil suits.

46. To pay fees in civil suits on behalf of the state in the collection of taxes and claims, five hundred dollars. Officers' fees.

West Virginia reports.

47. To pay expenses of printing and binding of the sixth volume of West Virginia reports, two thousand three hundred dollars. Printing supreme court reports.

48. Be it further enacted, that all moneys hereby appropriated to be used within said fiscal years, and not drawn within the period of said fiscal years, ending respectively on the thirtieth day of September, 1873, and the thirtieth day of September, 1874, shall not be thereafter drawn without authority of law. But to pay the same, and every part thereof the auditor is hereby authorized and required, when properly demanded, to issue his warrant on the treasury in the same manner he would be required to do if each item of expenditure was directed to be paid to a creditor by name. And no money shall be drawn from the treasury beyond the appropriations hereby made, unless the same is authorized by the constitution, or by some general law not provided for

Money not drawn during fiscal year not afterwards drawn without authority of law.

No money beyond appropriation to be paid.

Exception.

in this act. But appropriations to any of the public institutions of the state, for either of said fiscal years, may be drawn after the end of said fiscal year, and no money, appropriated hereinbefore for said institutions shall be drawn from the treasury except as the same may be actually required for immediate use.

Commencement.

49. This act shall be in force from its passage.

CHAPTER CXII.

AN ACT amending and re-enacting the eighteenth and nineteenth sections of chapter one hundred and four of the code, concerning the statute of limitations.

Approved April 7, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the eighteenth and nineteenth sections of chapter one hundred and four of the code be and the same are hereby amended and re-enacted, so as to read as follows :

Saving to plaintiff where prosecution of suit is prevented, etc., by defendant.

“ 18. Where any such right as is mentioned in this chapter shall accrue against a person who had before resided in this state, if such person shall, by departing without the same, or by absconding or concealing himself, or by any other indirect ways or means obstruct the prosecution of such right, or if such right has been or shall be hereafter obstructed by war, insurrection or rebellion, the time that such obstruction may have continued shall not be computed as any part of the time within which the said right might or ought to have been prosecuted. But this section shall not avail against any other person than him so obstructed, notwithstanding another might have been jointly sued with him if there had been no such obstruction. And upon a contract which was made and was to be performed in another state

or county by a person who then resided therein, no action shall be maintained after the right of action thereon is barred by the laws of such state or county."

" 19. If any action commenced within due time in the name of or against one or more plaintiffs or defendants, abate as to one of them by the return of no inhabitant, or by his or her death, or marriage; or if in an action commenced in due time judgment [or other and further proceedings] for the plaintiffs should be arrested or reversed on a ground which does not preclude a new action for the same cause, or if there be occasion to bring a new suit by reason of the said cause having been dismissed for want of security for costs, or by reason of any other cause which could not be plead in bar of an action, of the loss or destruction of any of the papers or records in a former suit which was in due time, in every such case, notwithstanding the expiration of the time within which a new action or suit must otherwise have been brought, the same may be brought within one year after such abatement, dismissal or other cause, or after such arrest or reversal of judgment or such loss or destruction, but not after."

Further time given to plaintiff; when.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CXIII.

AN ACT imposing a tax for the further construction of public buildings.

Approved April 7. 1873.

Be it enacted by the Legislature of West Virginia :

A tax of five cents on each hundred dollars of taxable property shall be assessed the present year, and collected, for the purpose of the further construction of buildings for the hospital for the insane, at Weston ; the West Virginia university, at Morgantown ; the

Tax imposed,
For what purpose.

institution for the deaf, dumb and blind, at Romney :
and for the penitentiary, at Moundsville.

CHAPTER CXIV.

AN ACT amending and re-enacting certain sections of chapter thirty-nine of the code concerning boards of supervisors, so as to confer upon county courts or other tribunals the administration of county affairs.

Approved April 7, 1873.

Be it enacted by the Legislature of West Virginia :

That the following sections of chapter thirty-nine of the code be so amended and re-enacted as to read as follows :

Succeed to the
former rights and
liabilities of their
county.

"2. Counties may sue in their own name for forfeitures, fines or penalties given to them by law or upon contracts made with them, and may be sued in their own names in the circuit court of such county, and the process instituting such suit may be executed by being served on the president of the county court of such county ; and if there be no such officer, then on the prosecuting attorney of said county. The real and personal estate, rights, interests and privileges in relation to real or personal estate, claims and rights of action heretofore vested in the board of supervisors of the counties, are hereby transferred to and vested in such counties. All contracts heretofore made with any such board of supervisors, or liabilities incurred by them, so far as they are good against such boards, shall be good against such counties."

clerk
for
duty.

"21. If any clerk, sheriff or other officer fail to perform any duty required of him by this chapter, and there is no other penalty or punishment imposed for

such failure, he shall forfeit not less than five nor more than fifty dollars for every such offence."

" 28. The county court or tribunal for fiscal and police purposes of every county, at the expense of the county, shall provide at the county seat thereof, a suitable court house and jail, together with convenient offices for the clerks of the circuit and county courts and shall keep the same in constant and adequate repair, and supplied with the necessary furniture, books, stationery, fuel, and such other things as shall be necessary. The offices of the clerks of the circuit and county courts shall be fire-proof, or be furnished with fire-proof vaults or safes. The jail shall be well secured, and sufficient for the convenient accommodation of those who may be confined therein, and so that the convicts may be in apartments separate from each other, and from the other prisoners; every apartment shall be so constructed that it can be kept comfortable. The court or tribunal for fiscal and police purposes may also provide other necessary offices and buildings, and may, by purchase or otherwise, acquire so much lands as may be requisite or desirable for county purposes, and may suitably enclose, improve and embellish the land so acquired."

To provide suitable court house and other public buildings.

" 29. Whenever the citizens of any county desire the re-location of their county seat, they may petition their county court, or tribunal having the management of its internal and fiscal affairs respecting the same. Such petition shall designate the place at which the petitioners desire to have the county seat re-located, and shall be signed by none but legal voters of said county. Such petition shall be presented at any term of said court or tribunal, when all the members of said court or tribunal shall have been summoned to attend, (but the court, composed of the president and two justices, only, shall act on said petition,) and an affidavit shall be made before

Removal of county seat.

Petition for.

What to be designated in petition.

How signed.

How presented.

Proof as to petitioners.

Number of petitioners.

Where election held.

Notice of election; how published.

Time of notice.

Form of ballots.

Effect of conveyance to or for county.

the president of said court or tribunal, by at least one credible witness, that the signers are, as the affiant verily believes, legal voters of said county. Upon petitions being presented at such term of said court or tribunal, signed by at least one-fifth of all the voters in the county, as shown by the last preceding census, allowing one vote for every six persons, asking for a re-location of a county seat at one place therein named, said court or tribunal shall order that at the next regular election held thereafter for county officers a vote shall be taken between said designated place and the existing county seat, and shall require the sheriff of the county to post notices of such order at three public places in each district in said county, at least twenty days before such election, and shall also order and have published a notice of such election in some newspaper, if there be one published in the county, at least four successive weeks before such election. Thirty days' notice of the presentation of any petition provided by this act, shall be made by four insertions in a weekly newspaper, if there be one printed in the county; if no paper be printed in the county, by posting the same at five public places in the county, one of which shall be at the front door of the court house. The ballots given for re-location shall have on them the words, "for re-locating," and also the name of the place voted for; the ballots given against re-location shall have on them the words "against re-locating." If the place designated in the petition obtains three-fifths of all the votes cast, the said court or tribunal shall make a record thereof and shall declare the same to be the county seat of the county, and shall remove the records and documents thereto as early as practicable thereafter. Such elections shall be conducted as elections for county officers."

"31. Every devise or conveyance of, or contract to convey, land within the limits of a county heretofore

made in any manner to or in trust for, or for the use or benefit of boards of supervisors shall have the same effect as if made to such county."

Disputed boundary lines, how settled; compensation to surveyors, &c.

"32. Whenever a doubt shall exist or dispute arise, as to the boundary line between any two counties in this state, it shall be lawful for the county courts or tribunals for police and fiscal purposes of said counties, to appoint not less than three nor more than five commissioners for each county, (a majority of those appointed for each county being necessary to act,) to ascertain and establish the true line. But the said commissioners before proceeding to ascertain such boundary shall employ a competent surveyor and chain carriers to run the same, and with the best evidence they can procure, direct such surveyor where to run and make the same. It shall thereupon be the duty of the surveyor to make three plats of the course or courses and distances of the said line, and to note particularly such places of notoriety or prominent objects through or by which it passes, as in the opinion of a majority of the commissioners will best designate the line; and the surveyor shall deliver the said plats to the commissioners, who, if they approve, shall sign the same and return one of them to the county clerk of each county to be recorded in his office and transmit the remaining one to the secretary of the state; and the said plats and descriptions or copies thereof, certified by the secretary of the state or such clerk, shall be evidence of the said line. The county court or tribunal for police and fiscal purposes of each county shall pay their own commissioners and clerk, and one-half of the compensation of the surveyor and chain carriers."

Disputed boundary lines of counties.

How settled.

Duty of surveyor and commissioners.

Plats; how disposed of.

Commissioners etc. How paid.

"33. When the county court or tribunal for police and fiscal purposes of a county deem it advisable to

How district lines
changed and two
or more districts
consolidated.

change the boundary between two or more districts, or to establish a new district out of another or two or more districts, or to consolidate two or more existing districts into one, they may (a majority of said court or tribunal being present,) make said change, establishment or consolidation, by an order entered upon their minutes. And if they deem a survey necessary they may employ the surveyor of lands for the county.

Duty of surveyor.

who shall survey and make two plats of the several districts as the same are thus altered, on which the new lines shall be plainly delineated, noting particularly such places of notoriety or prominent objects through or by which such lines pass, and return said plats and descriptions to such court or tribunal, and they shall be filed away in the clerk's office of such court or tribunal. The present sub-divisions of the counties by townships shall constitute such districts, until changed by a court constituted of a majority of the justices of the county."

Present sub-divi-
sion of counties to
remain until
changed by court.

Condemnation of
land for county
purposes.

"35. When the title to land for county purposes cannot be otherwise obtained on satisfactory terms, the county court of a county or tribunal for police and fiscal purposes, may order application to be made to the circuit court of the county in the manner prescribed by law for the condemnation of the land requisite for any county building or purpose."

Roads, bridges,
public landings,
ferries and mills.

"36. The county court or tribunal for fiscal and police purposes of every county, subject to the restrictions prescribed by law, may establish, make, regulate, alter or discontinue from time to time, roads, bridges, public landings, ferries and mills within the limits of their county."

Interest of state in
certain roads and
bridges transferred
to counties.

"37. The interest which belonged to the state on the first day of July, 1868, (whether as owner or one of the several owners, or a shareholder or stockholder,) in any road, (including turnpikes and plank roads) bridge or public landing lying wholly or in part within the limits of a county, is transferred to and

shall continue vested in such county so far as such road, bridge, or public landing is within the said county; together with all the rights and powers of the state pertaining thereto as such owner or one of several owners, or as a share holder or stockholder. But this section and the following one shall not apply to any railroad, or canal, lock, dam, slackwater, or other improvement of a river or navigable stream or to the suspension bridges across Monongahela river at Fairmont and Morgantown, or to the Cumberland road, or to Maryland and Virginia Bridge Company, or that part of the Beverly and Fairmont Turnpike line between Webster in the county of Taylor, and Beverly, in the county of Randolph, or to any bridge, toll house or other property of that part of said last mentioned road."

"38. A county may acquire, by agreement, condemnation, or otherwise, and hold the interest of the owners, shareholders or stockholders or any one or more of them other than the state, in any road, bridge, or public landing, so far as the same is within the limits of such county."

County court may acquire interest of owners, etc. in roads, etc. within its county.

"39. So far as any road, bridge, or public landing belongs to, or is under the care or control of a county, it shall be the duty of the county court or tribunal for fiscal and police purposes to cause the same to be kept in good repair and condition; and for this purpose they may, under the restrictions and regulations prescribed by law, cause the same to be worked and kept in repair by those who are liable to work on public roads in the county, or by a levy on persons and property, as the case may be, or either; cause toll gates to be established, and reasonable and lawful tolls to be collected, and appropriate money from the county treasury. And when any county acquires the interest of the state, or any other stockholder in any road bridge, or public landing, under either of the two preceding sections, the county court or tribunal

Duty of court as to roads, etc. owned by the county.

for police purposes of such county shall have all the powers, rights and privileges, perform all the duties and be subject to the same liabilities that were vested in, held, exercised, or required to be performed by or imposed upon the state or other former stockholders therein."

County subscription
to works of internal
improvement.

"40. When the court or tribunal for fiscal and police purposes of a county deem it desirable for the county or any district thereof, to subscribe to the capital stock of any joint stock company incorporated by this state, or by an act of the general assembly of Virginia, which remains in force in this state, to construct a work of internal improvement through, by, or near to such county or district, they may by an order specifying the company to whose stock it is proposed to subscribe, and the amount of the proposed subscription, cause a vote to be taken upon the question, at the several places of voting in the county or district, at the succeeding general election for state and county officers; but such order must be published throughout the county or district thirty-days at least before the poll is taken, as follows :

Vote to be taken
as to subscription.

Copies of order to
be made by clerk.

Sheriff to post
orders.

Fee of sheriff.

Order may be pub-
lished in newspaper

Election ; how held.

The clerk shall cause as many copies of such order as may be necessary to be written, and sign the same. He shall post one of them in a conspicuous place in his office and deliver the remainder to the sheriff of the county, who shall post one of the said copies in a conspicuous place at every place of voting in the county or district. For every one posted he shall have a fee of twenty-five cents out of the county treasury. The court or tribunal may also, in their discretion, direct a copy to be published in one or more newspapers. The poll shall thereupon be taken, and the result ascertained under the regulations prescribed by law for elections. The ballots used in the said poll shall be the same pieces of paper used in voting for officers at the said election, and there may be written or printed thereon the

words "subscription" or "no subscription," or any other words that will show how the voter intends to vote on the question proposed. If it appear by the said poll that not less than three-fifths of the voters of the county or district, who voted upon the question of the proposed subscription are in favor of the same, the county court or such tribunal shall then have authority to cause subscription to be made in the name of the county or district to the stock of said company to the amount proposed, or any less amount, in such terms as they may deem advisable, and to provide for the payment thereof by county or district taxation or loans."

Three-fifths of the vote to authorize subscription.

Subscription; how made.

"41. The right to the stock subscribed for in pursuance of the preceding section, or any special act of the legislature heretofore or hereafter passed shall be vested in the said county or district, and the county court or tribunal for police and fiscal purposes thereof shall have authority from time to time to appoint a proxy to represent the said stock in meetings and elections to be held by the stockholders of the company. The dividends of such stock shall be collected as the said court may order, and be paid into the county treasury."

Stock subscribed; how vested.

Appointment of proxy to represent stock.

Dividends; how applied.

"46. For county purposes the fiscal year shall begin on and include the first day of June in each calendar year."

Fiscal year; when to commence.

Laying the county levy and superseding the same.

"47. The county court or tribunal for fiscal and police purposes of every county, shall on the first day of June of every year or soon as possible thereafter proceed to make up their estimate of the amount necessary to be levied for the current fiscal year, to cover all county debts and liabilities payable during such year, including the probable expendidure for county purposes, the amount outstanding of unpaid orders on the county treasury, and a proper allowance

County levy; when laid.

For what purposes.

for delinquent taxes, expenses of collection and contingencies ; but deducting the money in the county treasury applicable to the service of the year, and county claims the collection of which during the year may, in their opinion, be relied on ; which estimate when approved by such court or tribunal, shall be entered by the clerk in the journal of the meeting. The said court or tribunal shall thereupon levy so many cents on every hundred dollars of the valuation of the property taxable in the county according to the last assessment thereof for state taxation, as will cover the estimated amount necessary to be raised for county purposes during the fiscal year."

**Duty of clerk when
levy is laid.**

"48. When an order is made for a levy the clerk of such court or tribunal shall, within five days thereafter, make out and certify so many copies thereof as may be necessary and deliver one of the said copies to the officer, who according to law is to collect such levy and charge the said officer with the amount of the levy in the proper account book of the county, and shall also deliver one of the said copies to the assessor or each of the assessors, if there be more than one for the county. The assessor (or each assessor) shall immediately in the several copies of his land and personal property book, extend in a separate column what may be due from each person by virtue of such levy ; and for this additional labor shall receive such compensation from the county treasury as such court or tribunal deem reasonable. The officer who is to collect the levy shall, at his own expense, make out proper tax bills, as prescribed in section seventeen of chapter thirty ; county levies shall be collected by the sheriff at the same time in the same manner, and under the same regulations as taxes are collected. Delinquent lists for county levies shall be returned and delinquent lands sold for county levies in the same manner and at the same place, and under the same regulations that lands returned

Duty of assessor.

**Collector to make
tax bills.**

Delinquent lists.

delinquent for state taxes are returned and sold. If any person think that he is improperly charged with county levy, or required to pay more than is proper, on account of the same, he may, within one year from the date of the order making such levy, apply for relief to the county court of the county; but before such application is acted upon he must give reasonable notice thereof to the prosecuting attorney, whose duty it shall be to attend to the interest of the county in the matter. Upon such application the said court shall order the applicant to be exonerated from so much as is improperly charged to or required from him if not already paid; or if it be paid they shall order it to be refunded to him. And the collecting officer upon delivery to him of a copy of such order, certified by the clerk or president of the said county court, shall obey the same, and the copy shall be a sufficient voucher to the officer in his settlement for the county levy for the amount thereby exonerated or ordered to be refunded."

Erroneous assessment.

Notice to prosecuting attorney.

Release by court.

"49. To an order for a levy a writ of supersedeas may be allowed by the circuit court of the county, or by the judge thereof in vacation, within forty days thereafter, on the petition of not less than twenty-four persons interested in reversing the said order. Without waiting the final decision on such writ, the county court or such tribunal as may be established in a county in lieu of a county court, may rescind such order and order a levy according to law; or if the court shall, on the hearing, be of opinion that the order is contrary to law, and reverse the same, the county court may, in like manner, order a levy according to law. If money be collected under any such order, which is afterwards rescinded or reversed, the collecting officer shall, upon demand, repay the same to the person from whom it was collected. If he fail to do so, the amount, with costs, may be recovered of him and his sureties, or any one or more

Supersedeas to levy.

How obtained.

Order of levy may be rescinded by court.

Money collected under order reversed to be refunded.

Remedy, if officer fails to make such repayment.

of them, by summons before a justice, or motion in the circuit court on ten days' notice."

Of the county treasury.

Sheriff ex officio
treasurer of the
county.

"50. The treasury of each county shall be kept by the sheriff thereof, who shall be ex-officio treasurer, of such county and of any district; and all money collected or received for the use of the county or district shall be paid to the sheriff, to be kept and disbursed by him for county purposes, under the regulations prescribed by law. He also shall have the custody and care of the evidences of debt and securities for money, certificates of stock, and the like, belonging to the county or to any district thereof, and shall attend to the collection of the same, and the interest and dividends accruing thereon; and when necessary, cause proper proceedings to be instituted to enforce the payment of any money due to the county or district. If there be no sheriff in any county, the office charged with the collection of the county levy shall, for the time being, be county treasurer."

His duties as such.

Accounts to be
kept by clerk of
court.

"51. The clerk of the county court, or tribunal for police and fiscal purposes, shall keep proper accounts in the books of his office to show, as far as practicable at all times, the money and claims due to and by the county, or which are to be accounted for to the said court or tribunal. In the said books he shall charge the officer who, according to law, is to collect the county levy with the amount thereof, and credit him with all payments made by him according to law, and with his commissions or compensation, and such allowance as may be made him by the board for delinquents or other cause. He shall keep proper accounts on the said books of all claims and securities, and judgments and fines, placed in the hands of any officer or person for collection for the use of the county. The clerk shall also keep an account of all evidence of debt, securities for money, certificates of

stock, and the like, belonging to the county and placed in the hands of the sheriff."

"52. The sheriff shall, from time to time, make to the county court or tribunal for police and fiscal purposes, such reports as they may direct, respecting his receipts and disbursements, and the state of the treasury; or any other matter committed to his charge, or pertaining to the finances of the county. But at the end of the fiscal year, he shall render to them, whether specially required or not, a full statement of his account for that fiscal year, showing the balance due by or to him at the commencement of the account, the amount of money collected by him during the year, and from what sources, and the date and amount of every county order paid, and to whom it was paid, together with such other particulars, if any, as such court or tribunal by resolution or order specially require. And the court or tribunal, or a committee thereof, or a commissioner appointed for that purpose, shall, without delay, examine the said account, and compare the same with the county orders paid by him, which he shall produce. When the court or tribunal on such examination, or the report of their committee or commissioner, is satisfied that the account is correctly stated, they shall cause the county orders included in such account to be cancelled, but so as not to render them illegible, and to be then filed away and preserved in the office of their clerk; and shall enter a minute of the settlement on their journal, showing the balance found due by or to the sheriff, and the date up to which his account was settled; and shall cause a copy of the said minute, certified by the clerk, to be delivered to the said sheriff, or shall cause a proper receipt to be given him for the county orders so surrendered and cancelled."

Report of sheriff:

When made,

Settlement of his account.

County orders to be cancelled and filed.

Minute of settlement to be entered on journal.

Copy to be certified by clerk and delivered to sheriff.

Receipt for orders.

"53. The county court or tribunal for fiscal and police purposes of every county, within four weeks after the beginning of each fiscal year, shall cause to

Publication of financial statement.

What it must contain.

be published throughout the county, in the manner specified in the fortieth section of this chapter, an account of the receipts and expenditures of the county during the previous fiscal year, arranged under distinct heads, and a specific statement of the debts of the county, showing the purpose for which each debt was contracted; the time when it became due, and up to what time the interest thereon has been paid."

In what cases orders may be drawn on the county treasury.

When and how orders may be drawn on the county treasury.

"54. No order shall be drawn on the county treasury unless authorized by special resolution, order or appropriation of the county court or tribunal for police and fiscal purposes, entered on their journal: except that when any bond, note or written evidence of the debt of the county, or any installment of interest thereon is payable; or where money is directed by law to be paid at fixed times or intervals, as in the cases of officers entitled to an annual salary payable quarterly; the president and clerk of such county court or tribunal for police and fiscal purposes, without such special resolution, order or appropriation, may make and deliver to the person entitled thereto an order on the county treasurer for any sum so due and payable."

How signed and delivered.

Form of orders: by whom signed; presentation and payment thereof.

Form of order.

"55. All orders on the county treasury shall be in form or effect as follows:

No. —, \$——. — county, — [date] —.

The sheriff will pay to A B, or order, the sum of — dollars and — cents, allowed by special order entered on the — day of —, 18—, after deducting therefrom the amount of all state, county and

other taxes and levies in his hands for collection against the said A B.

C—— D——, President.

E—— F——, Clerk."

"56. No money shall be paid by the sheriff out of the county treasury except upon an order signed by the president and clerk of the county court or tribunal for police and fiscal purposes, and properly indorsed as aforesaid, or upon judgment or decree as provided in the sixtieth section of this chapter.

When only money will be paid out of the treasury.

Interest and damages on county orders.

"57. If, when an order is presented to the sheriff, there are no funds to pay the same, the person entitled to receive the sum of money specified in such order may require the sheriff to indorse thereon, or write across the face thereof the words "presented for payment," with the proper date, and sign the same; and the order, if it was due at the time of presentment, shall in such case be payable with legal interest from the said date. But if the sheriff, having funds to pay the same, fail to pay any county order properly indorsed, when presented to him during business hours by a person entitled to receive the money therein specified, if the same be then due and payable, or fail to pay any judgment or decree against the county for a sum of money due and payable, when a copy thereof, properly certified, is so presented, he and his securities, and the personal representatives of such of them as are dead, shall be liable to the person entitled to receive the money due on the said county order, judgment or decree, for the whole amount due thereon at the time of such presentation, with legal interest on such amount from that time until payment, and ten per cent. on the same amount as damages."

When interest and damages to be paid on county orders.

When no funds to pay: what to be indorsed on order.

Penalty against sheriff for failure to pay orders in certain cases.

Claims against the county ; how paid.

Claims against
county : how
presented.

"58. Every person having a claim or demand against a county shall file with the clerk of the county court or tribunal for police and fiscal purposes thereof an account or statement of the same, fully setting forth the items ; and where the claim or demand is for services for which no rate or compensation is fixed by law or such court or tribunal, the number of days occupied in such services. The clerk shall present such account or statement to such court or tribunal at their first meeting thereafter, who shall after examination and consideration of the same allow the whole or such part thereof as they may deem just, or disallow the whole."

No suit to be brought against the county except on claims disallowed.

When suit may be
brought against
county.

"59. No suits shall be brought against a county for any demand for a specified sum of money founded on contract, except on order on the county treasury, until such demand has been presented to such court or tribunal and been disallowed by them in whole or in part. But if they neglect or refuse to act on such demand by the close of the first meeting after that at which it is so presented, or of the second meeting after it is filed with the clerk pursuant to the preceding section, or delivered to the president or any member of such court or tribunal for presentation thereto, it shall be deemed to have been duly presented and disallowed."

Judgment against
county.

"60. When a judgment or decree for a sum of money is rendered against a county, a copy thereof certified by the clerk of the court by which it was rendered, shall have the effect of an order on the county treasury from the time the sum therein mentioned is due and payable ; and no execution shall be issued thereon except by special order of the court or of the judge thereof in vacation, or upon its being

Execution thereon :
how obtained.

shown to the clerk of the said court by affidavit that such copy was presented to the sheriff without obtaining payment, or that the said sheriff had evaded or hindered such presentation."

"61. The lands, buildings, furniture and books belonging to a county, and used for county purposes, shall not be subject to execution or other process, but when any demand against the said county has been disallowed, in whole, or in part, or any order on the county treasury, or judgment or decree for a sum of money against the said county has been presented to the sheriff without obtaining payment, or the sheriff has evaded or hindered such presentation, it shall be lawful for the person entitled to the money due on such demand, order, judgment or decree, to petition any court having jurisdiction, or a judge thereof in vacation, for a writ of mandamus to be directed to the persons composing the county court or tribunal for police and fiscal purposes of said county, commanding them to provide for the payment of such money, by and out of the next county levy to be made in their county, or show sufficient cause why they should not be compelled to do so; which writ shall be returnable as the court or judge awarding the same may order. Upon the said writ such proceedings shall be had as are prescribed by law in other like causes; and the court, (but not the judge in vacation,) may, if the case justify it, award a peremptory mandamus directed to such persons (who shall be named therein) at the time such pre-emption writ is awarded, and compel them to provide in the next county levy to be thereafter made, for what shall appear to be due to the said complainant, with interest and cost. To any judgment or order of a circuit court, under this section, a writ of error or supersedeas may be granted on like principles and rules as in other cases."

How payment of claims against county may be enforced.

Competency as witnesses or jurors.

Competency of
witnesses and
jurors.

"63. In any suit or proceeding in which a county is interested, no person shall be incompetent as a witness by reason of his being an inhabitant of the county or liable to county levies, or a member of the county court or tribunal for police and fiscal purposes; nor shall any one be incompetent as a juror because he is an inhabitant of the county or liable to the county levies."

Prohibition and mandamus.

Power of circuit
court to control
proceedings of
county court, etc.

"64. The circuit court of any county may, by writ of prohibition, prevent the county court or tribunal for police and fiscal purposes of such county from exercising any jurisdiction or authority which is not conferred on them by law, or necessary and proper for carrying into execution the powers so conferred: and may by writ of mandamus enforce the performance of any legal duty of such other court or tribunal. But in such cases a writ of error or superse-deas may be granted on like principles and rules as in other cases."

Mandamus.

Judgment may be
appealed from.

*amended
ch. 169*
No city, town or
village exempt
from county levy.

Charters amended.

"68. No city, town or village, shall be exempt from county levy by reason of any provision in the act of incorporation; and the charter of any city, town or village so claiming exemption, shall be so far amended as to conform to this provision."

Commencement.

"69. This act shall take effect and be in force from its passage."

CHAPTER CXV.

AN ACT for the protection of agricultural and other industrial societies.

Approved April 7. 1873.

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful for any justice of the peace, on the application of any of the officers of any

state, county, or independent agricultural and mechanical association, agricultural society or industrial association of this state, to appoint a suitable number of discreet persons to assist in keeping the peace during the time when any such society shall be holding its annual or other fairs, and make an entry in his docket of the names of all such as he shall so appoint.

Special peace officers for the protection of agricultural and other industrial societies; how and when appointed.

2. All such persons so appointed shall have full power, and shall suppress all riots, disturbances and breaking of the peace that may occur on such fair grounds, or within one mile thereof during the times such fairs are being held, and may, upon view, arrest any person or persons who may at such time and place be guilty of violating any law of this state, and may pursue and arrest any such person anywhere in the state, and bring them before any justice of the peace of the county in which said offense was committed, and the justice being satisfied that the party has been guilty of violating the law, shall certify to the county court of the county the nature and character of the offense, and shall take from the party a recognizance with good security, in the sum of not less than one hundred dollars nor more than five hundred dollars, conditioned for his personal appearance before the said court and answering any indictment or presentment that may be made against him, and not to depart without leave of the court, and for his keeping the peace, and being of good behavior until he shall appear before the said court; and the justice shall immediately transmit said certificate and recognizance to the clerk of the county court, together with a list of the witnesses on the part of the state. The clerk shall forthwith give notice thereof to the prosecuting attorney, who shall take the necessary steps for the trial of the party. And should the party fail to enter into such recognizance, the justice

Duty of such persons when appointed.

Their power.

Duty of justice before whom offending party is brought.

To certify to county court nature of offense.

To take recognizance, with good security, from party.

Condition of recognizance.

Justice to transmit recognizance and certificate to clerk of county court; also list of witnesses.

Duty of clerk;

Of prosecuting attorney.

Should party fail to enter into recognizance; what then.

shall commit him to the county jail for sixty days, and shall make out a warrant of commitment and depute some one to convey the party to the jail, who shall deliver him and the commitment to the jailor, who shall detain him in his custody for the term aforesaid, unless he sooner enter into such recognizance before some justice of the peace of the county. Should such last named recognizance be entered into, the justice taking the same shall transmit it to the clerk of the county court. And the justice making said commitment shall transmit a copy of it to the clerk of the county court, together with a list of the witnesses on the part of the state. The clerk shall give notice thereof to the prosecuting attorney.

**Sale of spirituous
liquors prohibited.**

3. It shall be unlawful for any person to keep a ship, booth, tent, house, arbor, wagon or other carriage, vessel or boat, or any stand or table, or places of like kind, for the sale of any spirituous liquors, or sell, or expose for sale, give, barter or otherwise dispose of in or near such shop, booth, tent, house, wagon, or other carriage, vessel, boat, stand, arbor or table, or in any other way or place at or within one mile of such fair, and during the days and time such fair is being held; and any person violating the provisions of this section, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars: and shall moreover enter into a recognizance in a sum not less than one hundred dollars and not more than five hundred dollars, conditioned for his being of good behavior for six months; and in default of entering into such recognizance to be committed to the jail of the county for sixty days, but at any time before the expiration thereof, he may enter into such recognizance before any justice of the county, and be discharged.

**Penalty for
violating.**

Commencement.

4. This act shall be in force from its passage.

CHAPTER CXVI.

AN ACT providing for the adjustment of certain liabilities arising under contracts made between the first day of May, 1861, and the first day of May, 1865.

Passed April 7, 1873.

Be it enacted by the Legislature of West Virginia :

1. That in any action or suit or other proceeding for the enforcement of any contract, express or implied, where such contract was for the sale or purchase of any real or personal property, made or entered into between the first day of May, 1861, and the first day of May, 1865, it shall be lawful for either party to show by parol or relevant testimony, what was the true understanding and agreement of the parties thereto, either express or to be implied, in respect to the kind of currency in which the same was to be fulfilled or performed, or with reference to which, as a standard of value, it was made or entered into; and in an action at law or suit in equity it shall be necessary to plead the agreement specially, in order to admit such evidence.

Adjustment of certain liabilities arising under contracts.

What either party may prove by parol or relevant testimony.

Must plead agreement specially to admit of such evidence.

2. Whenever it shall appear that any such contract was according to the true understanding and agreement of the parties, to be fulfilled or performed in Confederate States treasury notes, or Virginia treasury notes, or was entered into with reference to such notes as a standard of value, the same shall be liquidated and settled by reducing the nominal amount due or payable under such contract in Confederate States treasury notes or Virginia treasury notes, to its true value at the time they were respectively made and entered into, or at such other time as may to the court, or, if it be a jury case, to the jury seem right in the particular case, and upon the payment of the value as ascertained, the party bound by such contract shall be forever discharged, of and from the same, provided that in all cases where

Contracts to be fulfilled or performed in Confederate States and Virginia treasury notes; how liquidated and settled.

In all cases where actual payment has been made early to have full credit.

Where the security has paid a debt payable in coin or its equivalent, in any controversy between such security so paying and principal debtor, the mode of payment shall not be inquired into.

actual payment has been made of any sum of such Confederate States treasury notes, or Virginia treasury notes, either in full or in part, of the amount payable under contract, the party by or for whom the same was paid, shall have full credit for the nominal amount as paid, and such payment shall not be reduced. And if any debt payable in coin, or its equivalent, by a principal debtor has been paid by the security for such debt, under and by virtue of a judgment against such security, or other demand for payment upon such security, so that such payment shall operate as a discharge of the principal debtor from his original obligation under the provisions of this act, in any controversy between such security so paying and the principal debtor, the mode of payment by such security shall not be inquired into.

CHAPTER CXVII.

✓ AN ACT to amend and re-enact chapter thirty-one of the code of West Virginia, concerning the sale of real estate for taxes; forfeiture for non-payment and non-assessment of taxes, and the transfer of title vested in the state.

Approved April 9, 1873.

Be it enacted by the Legislature of West Virginia:

Chapter amended.

1. That chapter thirty-one of the code of West Virginia, be and the same is hereby amended and re-enacted so as to read as follows:

CHAPTER XXXI.

Sale of real estate for taxes; forfeiture for non-payment and non-assessment of taxes; transfer of title vested in the state; deed to purchaser.

Lien for taxes; record of delinquent land; how taxes thereon may be paid.

Lien on real estate for taxes.

"1. There shall be a lien on all real estate for the taxes assessed thereon from the day fixed by law for

the commencement of the assessment of such taxes in each year, and the interest upon such taxes at the rate of six per cent. per annum from the first day fixed by law for the payment of such taxes into the treasury until payment.

"2. The auditor, under the direction of the governor, and at the expense of the state, shall adopt proper measures to obtain accurate and authentic returns, (where he is not already in possession of such returns,) of all real estate in this state which, since the tenth day of March, eighteen hundred and thirty-two has been returned delinquent for the non-payment of taxes to the state of Virginia, or this state; except real estate which, before the twentieth day of June, eighteen hundred and sixty-three was returned delinquent for the non-payment of taxes to the state of Virginia, where the taxes, exclusive of interest or damages, do not exceed twenty dollars.

Auditor to ascertain all real estate returned delinquent for non-payment of taxes since March 10 1832,

Exception as to real estate returned delinquent for the non-payment of taxes before June 20, 1863, where the taxes do not exceed twenty dollars, exclusive of interest.

"3. Of the real estate mentioned in the preceding section, except therein excepted, and of all real estate hereafter returned delinquent for non-payment of taxes, a record shall be kept by the auditor in his office. And until sale thereof as hereinafter directed, any person having a right to redeem the same may pay into the treasury the taxes on any such real estate as hereinafter provided.

Record thereof to be kept in auditor's office.

When taxes may be paid into state treasury.

Of the proceedings for the sale of delinquent land.

"4. At least twenty days previous to the first day of the term of the county court of any county, commencing after the first day of October of the year 1873, and of every second year thereafter, the auditor shall cause to be delivered to the sheriff or collector of the taxes for every county two lists of the real estate therein, which, at the time said lists are made out, shall have been returned delinquent for the non-payment of the taxes thereon for any previous year and not previously sold therefor, and on which the

When auditor to deliver to sheriff or collector list of real estate returned delinquent for non-payment of taxes.

List to be delivered every two years.

taxes and interest, or any part thereof, shall remain then unpaid and not released or otherwise discharged, with a statement of the several amounts due for state taxes for state and school purposes, county taxes and township or district taxes, on each tract or lot for each year, with interest on each amount, and fifteen per cent. damages on each amount with interest added thereto. But if real estate has been sold for the non-payment of taxes, the same shall not be charged with, or again sold on account of any tax for any year previous to that for the taxes of which the sale was made; except, that if for any cause a previous sale of real estate purchased by or in behalf the state, has been or shall be set aside by any court, and the taxes for which it was or shall be sold, have not been paid, the auditor shall include in such lists all such real estate, and the same shall be sold for the taxes, interest and damages due thereon for the years for which it was previously sold, in like manner and with effect as the other real estate mentioned in said lists.

Statement of
amounts due for
state taxes,
with interest,
to accompany list.

Real estate sold for
the non-payment of
taxes shall not again
be sold for any
taxes for any year
previous to that for
the taxes of which
the sale was made.

Exception as to real
estate purchased by
state and set aside,
and taxes for
which it was sold
have not been paid.

Duty of assessor
where, by change
of boundary, or
formation of new
county, any tract
of land returned
delinquent shall be
included in another
county.

"5. When by the formation of a new county or the change of the boundary between two counties, any tract or lot returned delinquent for non-payment of taxes in one county shall, after such return, be included in another, the assessor of the county or assessment district in which such land was included, shall make return thereof to the auditor before the first day of June, in the year eighteen hundred and seventy-three, and before the same day in every second year thereafter, in order that the same may be entered in the list to be delivered, pursuant to the preceding section, to the sheriff or collector of the county in which the said tract or lot is situated.

"6. Within ten days after receiving such lists, the sheriff or collector shall set up one of them at the front door of the court house of his county, with a notice appended thereto, that the real estate men-

Advertisement by
sheriff or collector.

tioned in such list, or so much thereof as shall be sufficient to satisfy the taxes, with the interest and damages on the same, and a commission of five per cent. on the whole amount to the sheriff or collector, will be sold at public auction, between the hours of ten in the morning and four in the afternoon on the first day of the next succeeding term of the county court of his county, commencing after the first day of October, at the door of the court house thereof, unless the said taxes, interest, damages and commissions are sooner paid to the sheriff or collector, or into the treasury of the state. Such sheriff or collector shall also, within the same time, publish in each newspaper in the county, (if there be any,) a notice of such sale, in form or substance as follows :

Notice to be published in newspaper

Sale of land for taxes.

The undersigned sheriff, (or collector,) of the county of —, will, on the first day of — term of the county court of said county, at the front door of the court house thereof, proceed to sell all the lands therein delinquent for the non-payment of taxes for the year (or years,) — which lands, with the taxes, interest and damages due on each tract, are specified in a list thereof, posted on the front door of the said court house, to which list special attention is directed.

Form of Notice of sale.

A — B —,

Sheriff, (or collector.)

If there be no newspaper published in the county, then a written or printed copy of such notice shall, within the same time, be posted conspicuously at the most public place in each district therein. Such taxes interest and commissions may be paid to the sheriff or collector at any time before such sale, and he shall make a list of the real estate within the county, the taxes on which were paid to him as aforesaid, and return the same to the auditor. After such sale as in the succeeding section is mentioned, if any real estate be not sold as therein required, it shall be presumed

If no newspaper be published in county then notice to be posted in each district, at the most public place.

Only of sheriff when tax is paid to him before sale.

Taxes presumed to be paid if land not sold, but such presumption may be rebutted.

that such taxes, interest, damages and commissions were paid; but such presumption may be rebutted.

When land sold
for taxes.

"7. If the said taxes, interest, damages and commissions be not previously paid, the said sheriff or collector shall proceed to make sale accordingly; and if the same be not completed on the first day it shall be continued from day to day, (Sundays excepted,) between the hours aforesaid until it shall be completed. When it shall appear to any sheriff or collector that any real estate inserted in the lists delivered to him as aforesaid, ought not to be sold for the amount stated therein, he shall suspend the sale thereof and report his reasons therefor to the auditor, who shall thereupon make such order in relation thereto as may be just. If the real estate, the sale of which is suspended as aforesaid, ought to be sold for the same or a greater or less amount it shall be inserted in the next list delivered to the sheriff, charged with the proper amount of taxes, interest, damages and commissions due thereon and sold therefor in like manner as the other real estate contained in said list.

Duty of sheriff or
collector when any
real estate ought
not to be sold for
the amount of
taxes stated in the
lists.

Such real estate
may be inserted in
next list and sold
for proper amount
of taxes.

How land sold for
non-payment of
taxes.

"8. The sale shall be of such tract of land or town lot, or of such separate quantities or parts of such tract or undivided interests in such lot as shall be sufficient to satisfy the state taxes for all state and school purposes, the county taxes and the township and district taxes for previous years remaining unpaid and due, with such interest, damages and commissions as aforesaid on each class of taxes. The proceeds of such sales shall be accounted for and disposed of as follows, viz :

How proceeds of
sales accounted for
and disposed of.

That portion thereof which was assessed for state purposes of every description shall be paid into the state treasury within sixty days after the day of closing said sales, and added to the irreducible school fund, and that portion thereof assessed for county and township or district purposes, shall be accounted for and paid as the county court or other tribunal au-

“9. No sheriff, deputy sheriff or collector, or other officer who shall return any real estate delinquent for the non-payment of taxes, or who shall receive a list thereof under the provisions of the fourth section of this chapter, or who shall sell, by himself, his deputy or agent, or who shall be the deputy of any officer making such sale, shall directly or indirectly purchase any real estate so sold, or be in any way directly or indirectly interested with any other person in such purchase. Every person violating this section shall forfeit one hundred dollars for each offense, and the sale shall be absolutely void, and the title to the real estate sold shall remain in the person in whose name the same was sold.”

“10. The sheriff or collector on receiving from any purchaser the amount of purchase money, shall grant to him a receipt for the same to the following effect :

	Name of person charged with taxes.
	Quantity of land charged.
	Estate held therein
	Local description of land.
	Amount of tax due thereon for State and school purposes, including interest, damages and commission.
	Amount of county tax due thereon including same.
	Amount of township, district or independent school district tax due thereon including same.
	Quantity of land sold.
	Name of purchaser.
	Amount of purchase money paid including interest, damages, commissions and fee for receipt.

Received of ——— the above sum of —, it being the whole amount paid by him for the purchase of land mentioned in the above memorandum and the fee for this receipt.

A—— B——,
Sheriff, (or collector.)

Sheriff's fee for receipt.

"11. For a receipt made out according to said form and signed by the sheriff or collector, he shall be entitled to receive from the purchaser twenty-five cents.

List of sales to be made out by sheriff.

"12. The sheriff or collector shall make out a list of the sales, with the following caption thereto:

Caption thereto.

'List of real estate within the county of —, sold in the month (or months) of — eighteen hundred and —, for the non-payment of taxes thereon for the year —.' Underneath shall be the several columns mentioned in the tenth section, with a like caption to each column. And there shall be an additional column showing the date of each sale, unless the sales were all in one day, in which case the day may be mentioned in the caption.

"13. Subjoined to the list shall be the following oath :

Oath subjoined to list.

I, A. B., sheriff (or collector or deputy for C. D., sheriff or collector,) of the county of —, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year, for the non-payment of taxes thereon for the year —, and that I am not directly or indirectly interested in the purchase of any of said real estate. So help me God.' Which oath shall be subscribed and taken before some person authorized to administer oaths.

List with certificate of oath attached to be returned within ten days to clerk of county court.

Duty of clerk in relation thereto.

"14. The list, with certificate of the oath attached shall, within ten days after the completion of such sale, be returned to the clerk of the county court, who shall within twenty days thereafter, make an accurate copy thereof in a well bound book, and transmit the original to the author.

When and how land sold may be redeemed.

"15. The owner of any real estate so sold, his heirs or assigns, or any person having a right to charge such real estate for a debt, may redeem the same by paying to the purchaser, his heirs or assigns, within one year from the sale thereof, the amount specified in the receipt mentioned in the tenth section, and such additional taxes thereon as may have been paid by the purchaser, his heirs or assigns, with interest on said purchase money and taxes, at the rate of twelve per centum per annum, from the time the same may have been so paid.

Within what time and how land sold may be redeemed.

16. What is authorized to be paid by the preceding section may be paid by such person as is mentioned therein, within the said one year, to the clerk of the county court of the county, in any case in which the purchaser, his heirs or assigns, may refuse to receive the same, or may not reside or cannot be found in the county; and a receipt therefor, showing when and by whom the payment was made, and the amount paid, shall be signed by the said clerk and a duplicate thereof filed by him in his office; but if the purchaser, his heirs or assigns, dispute the right of any one so paying money to the clerk, to redeem the real estate for the redemption of which such money is paid, he or they may, within one year after such payment, give to such person, or to his heirs, executors or administrators, a notice in writing of such dispute, and requiring him or them to appear at the next term of the circuit court of the county, and prove his or their right to redeem said real estate. Such notice shall be served at least ten days before the commencement of the term of the court to which it is returnable; and if the party served therewith fail to appear, or if he appear and fail to prove to the satisfaction of the court that he has the right to redeem the said real estate under the provisions of the preceding section, the court shall make an order accordingly, and also

Redemption money in certain cases; to whom paid.

Receipt therefor; by whom signed.

If purchaser dispute the right of any one so paying money to redeem the real estate, he may, within one year, give notice to such person to appear, &c., and prove his right to redeem said real estate.

When notice to be served.

If party fail to appear, or fail to prove that he has a right to redeem, court shall order deed to be executed to purchaser.

	directing the clerk of the county court to execute to the purchaser, his heirs or assigns, a deed for the said real estate in the manner hereinafter required ;
How deed executed.	and it shall be the duty of the clerk to execute such deed in the same manner and within the same time as if the money aforesaid had not been paid him.
When clerk to pay money received by him to the person paying it.	In every such case the clerk shall pay the money so received by him to the person paying it, or to his legal representatives, on demand ; but if the decision
When to purchaser,	of the court be that such person has the right to redeem such real estate, the clerk shall pay said money to the purchaser or his legal representatives. When the owner of real estate sold for the non-payment of
Purchaser to give duplicate receipts to owner making payments.	taxes thereon, or any other person having the right to redeem the same, shall pay the amounts mentioned in section fifteen of this chapter, the purchaser, his heirs or assigns to whom such payment is made, shall sign and give to the owner or other persons
What receipts must show.	redeeming, duplicate receipts showing when and by whom payment is made, and the amount paid ; or duplicate certificates or statements that the former owner or other person having such right, redeemed the real estate. If such purchaser or other person, to whom such amounts are actually paid, shall refuse
On failure of purchaser to give duplicate receipts, he shall pay twice the amount.	or on request fail to sign and give such receipts, he shall pay to the person making such payment twice the amount thereof, which may be recovered by action on the case in any court having jurisdiction :
Proviso.	Provided, that no such recovery shall be had in case of a decision of the circuit court against the right of such person to redeem such real estate as herein provided. One of said duplicate receipts or writings shall be filed with the clerk of the county court of the county in which the real estate was sold, on or
One of the duplicate writings to be filed with clerk of county court.	before the day on which the right to redeem the same will expire under the provisions of the said fifteenth section, and the clerk shall indorse on both such duplicates the fact and time of such filing. If the same be not so filed, such redemption shall be void
When to be filed.	
Endorsement of clerk.	

as to creditors and subsequent assignees of the benefit of the purchase of real estate, from the purchaser thereof, his heirs or assigns, for a valuable consideration, without notice at any time before the same is so filed. If such receipt or writing be filed after the time herein required, it shall operate as a notice to all persons from and after the date of such filing. This section shall not be deemed applicable to a redemption of real estate under the provisions of section thirty of this chapter. The clerk of the county court of every county shall in the month of June in each year in which real estate is required to be sold for the non-payment of taxes thereon, make a list of all real estate redeemed as aforesaid, not before included in a similar list, and certify the same to the auditor. If the taxes on any such real estate charged to the owner thereof for the year in which the sale was made be not paid, such real estate shall be included in the lists of real estate which the auditor shall cause to be delivered to the sheriff of the proper county, and may be sold for any unpaid taxes thereon for any year previous to that in which it was sold as aforesaid, or for that year, as if such former sale and redemption had not been made.

If not so filed, redemption to be void as to certain persons.

Effect of writing if filed after time required.

Not applicable to redemption under provisions of section 30.

Clerk to make list of real estate redeemed.

If taxes for year in which sale was made be not paid, real estate to be included in list delivered to sheriff and be sold.

Land sold and not redeemed.

“17. The purchaser of a part of any tract of land so sold and not redeemed within the said one year, his heirs or assigns, shall have the quantity purchased laid off at his or their expense, by the surveyor of lands for the county in which the same is situated; or if he be interested, or there be no county surveyor, then by some person appointed by the county court of the county in which the same is sold, for that purpose; the said quantity so laid off to be bounded in part by either or any of the lines of the tract, at the option of the purchaser, his heirs or assigns, so as not to include the improvements on the same, (if it can be avoided,) and to be in one body, the length whereof shall not

How a part of any tract of land sold and not redeemed is surveyed and laid off.

How to be bounded.

Not to include improvements when it can be avoided.

Plat, &c., to be returned to clerk county court.

If correct, to be recorded.

Where an entire tract sold and not redeemed; how surveyed and laid off.

be more than double the breadth, where that is practicable. A plat and description thereof shall be returned to the clerk of the county court of the county in which the sale was made; and if, upon examination thereof, he find it to be correctly made, he shall order the same to be recorded in his office, and a record thereof shall be made accordingly.

"18. When, also, an entire tract of land is so sold, and not redeemed within the said one year, the purchaser, his heirs or assigns, at his or their expense shall have a report made by the surveyor of lands for the county in which the same is situated, or if he be interested, or there be no such surveyor, then by some person appointed by the county court of the county in which the same was sold for that purpose, who shall, before some person authorized to administer an oath, take an oath that he will faithfully discharge the duties of his office according to the best of his skill and judgment, to the clerk of the county court, specifying the metes and bounds of land sold, giving such description thereof as will identify the same; and the said clerk, unless there be some valid objection to the report, shall order the same to be recorded in his office, and a record thereof shall be made accordingly.

Deeds; how obtained and by whom.

What must be cited in deed.

To what deed must refer in certain cases.

"19. After the expiration of the said one year, the purchaser of any real estate so sold and not redeemed, shall obtain from the clerk of the county court, in which the sale was made, a deed conveying the same, in which shall be cited all the material circumstances appearing in his office in relation to the sale. The oath and certificate annexed to any list, and the disposition of the list need not be mentioned. If the sale be of part of a tract of land, the deed shall refer particularly to the plat and description returned, and the order of the clerk of the county court thereon; and if the sale be of an entire tract of land, it shall refer to the report made and the order thereupon. If the sale be of a town lot, or of an undivided

interest in such lot, and a report be made by a surveyor describing the same, and such report be ordered by the clerk of the county court to be recorded, the deed shall refer to the said report. But when, in case of a sale of a town lot, or of an undivided interest in such lot, there is no such report, the clerk of the county court shall, nevertheless, execute a deed therefor to the purchaser, if he desire the same. For every deed executed under this chapter, the clerk of the county court, commissioner or clerk shall be entitled to three dollars, which the purchaser shall pay on the delivery of the deed.

Clerk to execute deed in certain cases when there is no report.

Fees of clerk.

“20. Where the clerk of the county court is himself the purchaser, the deed for the land purchased by him shall be executed by the clerk of the circuit court; and where the clerk of the county and circuit court is the same person, the deed shall be made to him by the prosecuting attorney for the county.”

How deed executed when clerk of the county court is the purchaser.

“21. Where the purchaser, his heirs or devisees has assigned the benefit of his purchase, the deed with his or their assent, evidenced by his or their joining therein, or by a writing duly executed and acknowledged, may be executed to his or their assignee.

How deed executed when purchaser assigns benefit of his purchase.

“22. When for any cause, a proper deed has not been executed as aforesaid, the circuit court of the county or the judge thereof in vacation, may at any time appoint a commissioner to execute the same to the purchaser, his heirs or assigns.

When court or judge may appoint a commissioner to execute deed.

“23. If the purchaser shall have died, the clerk of the county court may make such deed to his heirs or assigns, and upon his failure or refusal to do so they may move the circuit court of the county or the judge thereof in vacation, to order the clerk of the county court or a commissioner to execute a deed to such heirs or assigns; and it shall be the duty of such court to make an order accordingly, where the party so moving is entitled to such deed. Every

If purchaser die, clerk to make deed to his heirs or assigns.

Remedy if clerk fail or refuse to make such deed.

Effect of deed executed by commissioner.

deed executed by a commissioner under this and the preceding section, shall have the same force and effect in all respects as if made by the clerk of the county court. Where two or more tracts or parts of tracts, or town lots, charged to one person with tax or taxes, for the same year or years, shall have been sold and purchased by the same person or by assignment or otherwise, the benefit of the purchase shall have been acquired by one person, he may obtain from the clerk of the county court several deeds for each or one deed for all or any of the tracts or lots, or parts thereof which shall be as effectual as to each as several deeds would be.

When purchaser may have one deed for several tracts or parts of tracts, &c.

Effect of such deed.

Purchaser must obtain deed in one year or original owner may redeem.

“24. If no such deed or order of court or of a judge be made under this chapter within one year after the right to redeem the real estate sold as aforesaid shall expire as hereinbefore provided, the former owner, his heirs or assigns may after such year, and before such deed or order is made, redeem the land by paying such amount with such additional taxes and such interest as is mentioned in the fifteenth section, together with the cost of survey or report, and interest thereon if any shall have been made. But no such deed shall be made or obtained after five years from the date of such sale, except that where the sale was made before the passage of this act, the deed therefor may be made within two years after the date of such passage.

No deed to be obtained after five years from sale.

Deed to purchaser; what title vested in him thereby.

“25. When the purchaser of any real estate so sold, his heirs or assigns, shall have obtained a deed therefor according to the provisions of this chapter, and caused the same to be admitted to record in the office of the clerk of the county court of the county in which such real estate or the greater part thereof may lie, such estate shall stand vested in the grantee in such deed in and to said real estate, as was at the commencement of or at any time during the year or years for which the said taxes were assessed vested in the par-

ty assessed with the taxes for which it was sold, and in any other person or persons having title thereto, who have not in his or their own name been charged on the assessor's books of the proper county or district with the taxes on said real estate for the year or years for the taxes of which the same was so sold and actually paid the same as required by law, notwithstanding any irregularity in the proceedings under which the said grantee claims title, unless such irregularity appear on the face of the proceedings of record in the office of the clerk of the county court, and be such as materially to prejudice the rights of the owner whose real estate is sold, and it be clearly proven to the court or jury that such diligence has been exercised by the party in whose name it was sold; that but for such irregularity the said party would have redeemed the same under the provisions of the fifteenth and sixteenth sections of this chapter. When there are more than one of such owners who are co-tenants of the real estate, if the same be charged to one of them alone or one and others without naming the others, such estate as was vested in all, or any or either of them, shall pass to the grantee in such deed. When real estate is charged to heirs by description, or to the estate of a deceased party, such estate as was vested in the heirs or devisees of the decedent shall pass to the grantee in such deed. When more than one tract of land is charged as one, or the quantity or residence of the party is mis-stated, the title shall nevertheless pass to the grantee in such deed. No irregularity or overcharge as to a part of such taxes or purchase money, nor payment of a part of such taxes, shall invalidate the sale, except as to a part of the real estate so sold proportioned to the whole thereof, as such part of the taxes or purchase money is to the whole thereof. If the real estate be charged to a trustee by name either with or without the addition of "trustee." or where there are more

Deed not affected by irregularity or overcharge as to part of taxes, &c., except as to the extent of the error.

Deed not affected
by deed of trust,
mortgage, or
other lien.

Not affected by
certain irregularity
as to survey, man-
ner of laying off,
&c.

If valid under sale
for state taxes not
affected by irregu-
larities as to county
taxes, &c.

Party alleging
payment of taxes
must prove it.

When and how
suit instituted to
set aside deed.

than one trustee, if it be charged to one or more of them, and others without naming the others, and with or without the addition of "trustees," or if it be charged to such trustee or trustees by description, without naming any of them, the title of such trustees and of each and every person for whom or whose use the said real estate was held in trust by such trustee or trustees, shall pass to the grantee in such deed. If at the time of such sale the real estate sold be under a mortgage or deed of trust, or there be any other lien or incumbrance thereon, and the mortgagee, trustee, cestui que trust, or person holding any such lien or incumbrance shall fail to redeem the same within the time prescribed by the fifteenth section of this chapter, then all the right, title and interest of such mortgagee, trustee, cestui que trust, and of the person or persons holding any such lien or incumbrance on the real estate so sold and not redeemed, shall pass to and be vested in the grantee in such deed; and his title to the premises shall in no way be affected or impaired by any such mortgage, deed of trust, lien or incumbrance. And no irregularity as to the manner of laying off any real estate so sold or in the plat, description or report of the surveyor or other person, shall after the deed is made, invalidate the sale or deed. If the deed be valid under the sale for the state taxes, it shall not be affected or impaired by any irregularity in the proceedings and sale for the county and township or district taxes, or either.

"26. If it be alleged in any suit or proceeding that the taxes for non-payment of which the real estate was sold were not in arrear, the party making such allegation must establish the truth thereof by proving that the taxes were paid, as provided in the next section.

"27. If the owner of any real estate sold for the non-payment of the taxes thereon, his heirs or assigns.

claim that the taxes on account of which the sale was made were not in arrear, he may, within five years after the deed shall have been obtained and admitted to record, institute a suit in equity against the purchaser, his heirs or assigns, alleging the payment of the taxes, and seeking to have the sale and deed declared void; or he may, within such time, in any suit or action pending relative to the real estate in which the payment is not alleged, give to the purchaser, his heirs or assigns, parties thereto, notice in writing of his purpose to prove the fact of such payment, or file such notice in the case at least thirty days before the trial or hearing thereof; and having done so, may in such suit or action prove that such taxes were paid. But unless he shall within said five years institute such suit, or give or file such notice in a suit or action pending relative to such real estate, he shall not prove such fact, or on such account in any way question the validity of the sale or deed.

Notice of payment
when filed in suit.

“28. When a part of a tract of land or town lot has been sold, the residue thereof, or any part of such residue may be subsequently sold on account of the taxes on the whole for the year in which the sale was made. The purchaser of a part of a tract or lot may pay a part of the taxes charged on the whole for any year subsequent to that in which the sale was made, proportioned to the whole as the quantity or part of the real estate purchased by him is to the whole, in discharge of the taxes on such part, and the residue of the estate may be sold on account of the residue of the taxes. But when only a part of such tract or lot has been sold, if the purchaser does not make such payment, the whole tract or lot, or any part thereof, may be subsequently sold on account of taxes for the year in which the sale was made, and any subsequent year or years together, or when the whole tract or lot has been sold, and no one has paid the taxes thereon for the years subsequent to that in

When part of
tract or lot sold,
residue may be
sold for taxes of
the year in which
sale was made.

Purchaser required
to pay taxes on
part purchased pro-
portioned to the
whole.

Residue of land
may be sold for
residue of taxes.

If purchaser does
not pay such pro-
portion of taxes,
whole tract may
be sold.

Deed of purchaser; how obtained. that in which the sale was made, the same, or any part thereof may be sold on account of such tax or taxes, and the purchaser may have the same laid off, or report made, and obtain a deed and have it recorded in the same manner and with like effect as if the former sale had not been made.

Effect of deed as evidence.

“29. In all cases in which a question shall arise as to any such sale or deed, or the effect thereof, such deed shall be prima facie evidence against the owner or owners, legal or equitable, of the real estate at the time it was sold, his or their heirs and assigns, and all other persons who might have redeemed the same, within said one year, as hereinbefore provided, and conclusive evidence against all other persons, that the person named in the deed as recorder or clerk of the county court was such, that the sheriff or other officer who made the sale was such sheriff or officer as stated in such deed, that the material facts therein recited are true, and that such estate as is mentioned in the twenty-fifth section of this chapter vested in the grantee of the deed.

Saving as to persons under disability.

Within what time infants and others under disability may redeem.

“30. Any infant, married woman, insane person, or person imprisoned, whose real estate may have been so sold during such disability, may redeem the same by paying to the purchaser, his heirs or assigns, within one year after the removal of the disability, the amount for which the same was sold, with the necessary charges incurred by the purchaser, his heirs or assigns, in obtaining the title under the sale, and such additional taxes on the estate as may have been paid by the purchaser, his heirs or assigns, and interest on the said items at the rate of six per centum per annum from the times the same were paid. If any such person own an undivided interest in real estate so sold, he may redeem such interest in like manner, and within the same time by paying

What must be paid.

Redemption of undivided interest.

such proportion of the purchase money, charges, taxes and interest, as his interest in the premises is to the whole tract or part sold, but he shall not have the right to redeem more than his own undivided interest. Upon such payment, within one year after the removal of such disability, the purchaser, his heirs or assigns, shall, at the cost of the original owner, his heirs or assigns, convey to him or them, by deed, without warranty, the real estate so redeemed, except as follows: If improvements have been made on the said real estate since the date of the deed therefor, and before the offer to redeem the same under the provisions of this section, the original owner shall pay to the person holding the legal title to said real estate at the time of such offer the value of all such improvements, after deducting therefrom the value of the use of said real estate from the date of said deed to the date of such offer. If the parties cannot agree on the amount to be paid, either of them may file his petition, after ten days' notice in writing to the other, of his intention to do so, in the circuit court of the county in which the real estate is, to have the proper account taken by a commissioner to ascertain the amount if any to be paid by such original owner. Upon the filing of such petition the court shall make an order referring the same to a proper commissioner who shall, with all reasonable dispatch, ascertain and report to the said court what sum, if any, such original owner must pay to redeem the said real estate, which report, if confirmed, shall be final between the parties. Upon the payment or tender of the sum, if any, so ascertained by the commissioners to the person then holding the legal title to said real estate, he shall, as hereinbefore provided, convey the same to the said original owner, and upon his failure or refusal to do so, the court may appoint a commissioner to execute such deed, who shall execute the same accordingly: Provided, that if the real estate of a married woman, sold for the non-pay-

Purchaser to re-
convey; when
and how.

Improvements on
property redeemed;
to be paid for by
real owner.

Proceedings where
parties cannot
agree on amount to
be paid.

Order of court upon
filing of petition.

Commissioner to
execute deed to
former owner.

Proviso as to sepa-
rate property of
married women.

ment of taxes thereon, be at the time of such sale and separate property, she may redeem within the time specified in section fifteen of this chapter and not afterwards, and all provisions of section and of section sixteen of this chapter shall be applicable to such cases.

Lands purchased by the State for tax

When real estate sold for taxes must be purchased for state.

“31. When any real estate is offered as aforesaid, and no person present bids thereat, the collector shall be satisfied to the state from the sale, the collector shall purchase the same on behalf of the state for the taxes thereon, and the interest on the same, and shall make out a list thereunder the following caption :

List to be made out.

“List of real estate within the county of _____ in the month (or months,) of _____, eighteen _____ and _____, for the non-payment of taxes for _____ the year (or years) _____, and purchased for _____ of West Virginia.” Underneath shall be two columns mentioned in the tenth section with the following caption to each column, omitting, however, the first column headed “name of purchaser.” The collector making out the said list shall make oath that it is a true account of all the real estate within the county purchased by him for the state during the year _____ and return the list with a certificate of title attached, to the clerk of the county court _____ days after such sale, who shall within two days after such return make an accurate copy thereof in a well bound book and transmit the original to the auditor. Upon receiving said list the auditor shall credit the sheriff or collector with the amount thereof which the real estate therein specified was sold for, but not with any commission thereon.

Oath to be attached

List to be returned to clerk with certificate of oath; when.

Duty of clerk,

Duty of auditor on receiving list.

Auditor to record lists.

“32. The auditor shall cause all the lists made out under the preceding section to be recorded in his office under the preceding section to be recorded in a well bound book, and all such est

title and interest in the real estate mentioned in such lists as would have vested in an individual purchaser thereof at such sale who had obtained proper deeds therefor and caused them to be admitted to record in the proper office, shall be by the sale and the purchase on behalf of the state vested in the state, without any deed or other conveyance therefor to the state; subject, however, to the right of redemption mentioned in the next section.

Title vested in state by such purchase.

“33. The previous owner of any real estate so sold and purchased for the state, his heirs or assigns, or any person having a right to charge it for a debt, may within one year from the sale thereof, or if the same was heretofore sold, may within one year from the passage of this act but not afterwards, redeem the same by paying into the treasury the amount of all state and state school taxes with interest and damages due thereon at the time of such purchase, including such taxes as were or should have been assessed for the year in which the same was sold, with such additional sums as would have accrued thereon for such taxes if the same had not been purchased by the state with interest thereon at the rate of twelve per cent. per annum, from the twentieth day of January in the year following that in which the same would have accrued; and by paying to the sheriff of the county in which the same was sold all the county and township or district taxes due thereon at the time of such sale, including such taxes as were or should have been assessed for the year in which the same was sold, with such additional sums as would have accrued thereon for county and township or district taxes if the same had not been purchased by the state, with interest on the sum so due and unpaid and which would have so accrued in each year, at the rate of twelve per centum from the twentieth day of January, in the year following that in which the same would have accrued; and also by paying to the officer

When owner, &c., may redeem such real estate.

What to be paid, and when.

whose duty it is to receive and disburse the same, any independent school district taxes due thereon at the time of such purchase, including such taxes as were or should have been assessed for the year in which the same was sold, with such additional sums as would have accrued thereon for such taxes, if the same had not been purchased by the state with interest thereon for each year at the rate of twelve per centum per annum, from the time the same should have been paid in the manner hereinafter set forth.

Mode of redemption.

Mode of redemption by persons having a right to redeem land purchased by state.

“34. Any person having a right to redeem any tract or lot of land purchased by the state at a sale thereof for the non-payment of the taxes thereon, who may desire to redeem the same as provided in the next preceding section, may, by himself or his agent, apply to the clerk of the county court, or such other officer of the county in which such land lies, as may have the custody of the lists of county, township or district and independent school district taxes, or the records thereof, for a statement showing the amount and character of such delinquent taxes, and the years for which the same were assessed; and upon such application the said clerk or other officer is hereby authorized and required to ascertain from said delinquent lists or records the amount of such delinquent taxes, and shall make a statement in duplicate showing the amount and character thereof in detail, and the years for which the same were assessed, and certify the same and deliver them to the person so applying. Upon this being returned to him, as hereinafter provided, said clerk or officer shall make an indorsement upon the original to the effect that a duplicate thereof has been filed in his office and deliver it to the party so returning it, and file the duplicate thereof in his office and charge the sheriff or collector with the amount therein stated to have been received by him. In case there are no

Duty of clerk as to such application.

Endorsement by clerk.

Clerk to file duplicate in his office, and charge the sheriff, &c.

records of the delinquent taxes aforesaid, and the clerk or other officer finds no county, township or district or school district taxes charged against the land, he shall give to the party applying a certificate showing this fact, which shall have the same effect for this purpose as the statements hereinbefore referred to.

Certificate of the clerk where there are no records of the delinquent taxes, &c.

Effect of such certificate.

“35. The person procuring said duplicate statements shall present them to the sheriff or collector of said county, who shall thereupon be authorized to receive the taxes therein stated to be due, and upon payment to him of the amount of said taxes with interest as required by law, it shall be his duty to indorse the fact of such receipt upon each of them over his official signature, and deliver them to the party so paying said taxes, to be returned by him to the said clerk or other officer for his indorsement as aforesaid: Provided, that if the records of the auditor's office shall show to the satisfaction of the auditor that the entire amount of taxes for county, township or district purposes, properly chargeable against any tract of land have been returned to his said office, then the said auditor may issue a certificate of redemption to the owner or agent, upon payment of all of said county, township or district taxes, in addition to all state tax, as hereinbefore required, into the state treasury, and without requiring the receipt of the sheriff or collector as hereinbefore stated.

When sheriff authorized to receive taxes due by owner on land purchased by state.

Indorsement of sheriff.

Statements to be returned to clerk for his indorsement, &c.

Provido, as to records of auditor's office.

When auditor to issue certificate of redemption without requiring receipt of sheriff, &c.

“36. Upon the production to the auditor of a copy of said statement, so receipted by the sheriff or collector, and indorsed by the clerk or other officer aforesaid, or of the certificate mentioned in the thirty-fourth section, and the further payment into the treasury of the amount of delinquent state and state school taxes, and interest as required by law, he shall issue a certificate of redemption for the tract or lot of land upon which the taxes have been so paid.

Auditor authorized to issue certificate of redemption.

“37. For every statement or certificate issued in pursuance of the previous sections, by the clerk of the

Fees of auditor for issuing certificate of redemption, and of clerks for issuing statements, &c.

county court or other officer, the party procuring the same shall pay him a fee of twenty-five cents, and for every certificate of redemption issued by the auditor he shall be entitled to receive from the person procuring the same, if the amount of tax delinquent be less than one dollar, fifty cents; if over one dollar and not exceeding twenty dollars, one dollar; and if over twenty dollars, two dollars.

Auditor to certify redemption to assessor.

Duty of assessor.

Claimants who have acquired the state's right to such lands by the constitution, or former laws not to be prejudiced by such redemption.

“38. When real estate so purchased is so redeemed, the auditor shall certify the fact of such redemption to the proper assessor, and it shall thereupon be the duty of such assessor to re-enter the same upon the land books of the county or district in the name of the former owner thereof, or in case the same has been conveyed by deed to any other person to enter the same in the name of the grantee in such deed. But such redemption shall not prejudice any claimant of such land, or any part thereof, who may have acquired the state's right thereto by the constitution or former laws of the state.

Lands not entered in the assessors' books forfeited.

Owner to have lands entered on land books and charged with all taxes.

Tracts of land of one thousand acres or more; when forfeited to state.

No forfeiture as to a part, in certain cases.

As to forfeiture and redemption of real estate by infants, married women and insane persons.

“39. It shall be the duty of every owner of land to have it entered on the land books of the county in which it or a part of it is situated, and to cause himself to be charged with the taxes thereon and pay the same. When for any five successive years after the year 1869, the owner of any tract of land containing one thousand acres or more, shall not have been charged on such books with state tax on said land, then by operation thereof the land shall be forfeited and the title thereto vested in the state. But if for any one or more of such five years the owner shall have been charged with state tax on any part of the land, such part thereof shall not be forfeited for such cause. And any owner of land so forfeited or of any interest therein at the time of the forfeiture thereof, who shall then be an infant, married woman or in-

same person, may until the expiration of three years after the removal of such disability have the land or such interest charged on such books, with all state and other taxes that shall be, and but for the forfeiture would be chargeable on the land or interest therein for the year 1863, and every year thereafter with interest at the rate of ten per centum per annum, and pay all taxes and interest thereon for all such years and thereby redeem the land or interest therein: Provided, such right to redeem shall in no case extend beyond twenty years from the time such land was forfeited. And when for any five successive years after the passage of this act, the owner of any tract or lot of land, less in quantity than one thousand acres, shall not have been charged on such books with state tax on said land, then by operation of law and without any proceedings therefor the land shall be forfeited and the title thereto vested in the state. But if for any one or more of such five years, the owner shall have been charged with state tax on any part of the land, such part shall not be forfeited for such cause. If the owner of any such tract or lot of land, or any person having an interest therein shall at the time of the forfeiture thereof be an infant, married woman or insane person, he may redeem the said land or interest thereon in the same manner and within the same time as is herein provided in regard to tracts of one thousand acres or more. A record of all real estate so forfeited which shall come to the knowledge of the auditor, shall be kept in his office, in which shall be shown the name of some former owner or supposed owner, the quantity or supposed quantity and local or other description of the real estate, for what years the owner was not charged with the taxes and when the real estate became forfeited. Such record shall be prima facie evidence that the owner was not for such years charged with the taxes on such real estate, and that he did not cause it to be entered and charged with such taxes

Right to redeem
not to extend be-
yond twenty years.

Tracts of land of
less than one thou-
sand acres; when
forfeited to state.

No forfeiture as to
a part in certain
cases.

Mode of redemp-
tion by infants,
married women
and insane persons.

Auditor to keep
record of real
estate forfeited.

Contents of such
record.

Effect of such
record as evidence.

as aforesaid, and that the real estate was forfeited and vested in the state at the time specified.

Assessor to inform
auditor of all real
estate forfeited.

In order to enable the auditor to make such record it shall be the duty of the assessor of each county or district in which such real estate ought to have been entered and charged with taxes as aforesaid, upon discovering any such failure, to inform the auditor of all facts in relation thereto.

When and in what
cases the title to
forfeited lands, &c.,
vests in other
claimants thereof.

“40. All title to lands in this state heretofore forfeited, or treated as forfeited, waste and unappropriated, or escheated to the state of Virginia, or this state, or purchased by either of said states at sales made for the non-payment of taxes and become irredeemable, or hereafter forfeited or treated as forfeited or escheated to this state, or purchased by it and become irredeemable, not redeemed, released or otherwise disposed of, vested and remaining in this state, shall be and is hereby transferred to and vested in any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees,) for so much thereof as such person has or shall have had actual continuous possession of, under color or claim of title for ten years, and who, or those under whom he claims shall have paid the state taxes thereon, for any five years during such possession; or if there be no such person, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees,) for so much of said land as such person shall have title or claim to, regularly derived, mediately or immediately from or under a grant from the commonwealth of Virginia, or this state, not forfeited, which but for title forfeited would be valid, and who, or those under whom he claims has, or shall have paid all state taxes charged or chargeable thereon for five successive years, after the year 1865, or from the date of the grant, if it shall have issued since that year; or if there be no such

Taxes to be paid
by claimant.

erson as aforesaid, then to any person (other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees,) or so much of said land as such person shall have had claim to and actual continuous possession of, under color of title for any five successive years after the year 1865, and have paid all state taxes charged or chargeable thereon for said period.

“41. All lands in this state, waste and unappropriated, or heretofore or hereafter for any cause forfeited, or treated as forfeited or escheated to the state of Virginia, or this state, or purchased by either and become irredeemable, not redeemed, released, transferred or otherwise disposed of, the title thereto shall remain in this state till such sale as is hereinafter mentioned be made shall, by proceedings in the circuit court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder.

Forfeited lands not redeemed. How sold and to whom.

The former owner of any such land shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this state with interest at the rate of twelve per centum per annum, and the cost of the proceedings, if his claim be filed in the circuit court that decrees the sale within two years thereafter.

Former owner to receive excess, after paying taxes, &c.

Rate of interest charged.

When and where claim to be filed

“42. The real estate embraced in the lists which the auditor shall cause to be delivered to any sheriff or collector shall be deemed to have been sold and the proceeds thereof shall be deemed at least equal to the sums to be satisfied therefrom, unless a list of such thereof as may be purchased for the state be received by the auditor, according to the thirty-first section of this chapter, and then the proceeds shall only be deemed so much less as the credit on such list shall amount to.

When real estate embraced in list delivered to sheriff, &c., deemed sold.

When proceeds of real estate sold for taxes to be paid into treasury.

"43. The proceeds of real estate sold by any sheriff or collector under this chapter shall be paid into the treasury within the time prescribed in the eighth section of this chapter.

Commission allowed officer for prompt payment.

"44. Every sheriff or collector shall be allowed a commission of seven and a half per cent. on the said sales, (other than to the state,) if he shall punctually pay into the treasury within the time prescribed by the preceding section, the amount with which he is chargeable on account of such sales; but in case he shall fail to pay the same as so required, he shall only be allowed a commission of two and a half per cent. on the same.

Commission when not paid in time.

Proceedings against officer failing to pay.

"45. In case of a failure to pay, proceedings shall be had according to the thirty-fifth chapter.

Penalty on clerk for neglect of duty.

"46. If a clerk of the county court fail to perform any duty required by this chapter, he shall for every such offense, forfeit fifty dollars. For services rendered by him under this chapter, and not otherwise herein provided for, he shall be entitled to the same fees as for similar services in other cases.

His fees.

Lands sold in 1800 and subsequent thereto, and before 1873: how redeemed

"47. Lands sold in the year eighteen hundred and sixty, and any year subsequent thereto, and before the year eighteen hundred and seventy-three, for the non-payment of taxes thereon, shall be redeemed according to the provisions of this chapter, and if not so redeemed, conveyances shall be made to the purchasers thereof, their heirs or assigns, by the clerk of the county court in the same manner and with like effect as if this chapter had been in force when the sale was made and the proceeding had been according to its provisions. All deeds for real estate sold in the year eighteen hundred and sixty for the non-payment of taxes thereon, made since the twenty-seventh day of February, eighteen hundred and sixty-six are hereby legalized and made valid and shall have the same force and effect in all respects as a sale, deed and other proceeding hereafter made and

If not so redeemed, conveyed to purchasers by clerk of county court.

Deeds for real estate sold in 1800, and made since February 27, 1806, legalized.

had according to the provisions of this chapter; except that the former owner of such real estate, his heirs or assigns, may, within one year after the passage of this act redeem the same in all respects as if no such deed had been made. And it shall be the duty of the person having the legal title to said real estate, derived through any such deed, to re-convey the same to such former owner, his heirs or assigns, upon the payment or tender to him of the sum required to redeem the same and the costs attending such re-conveyance within the said one year, and upon his failure or refusal to do so the circuit or county court of the county shall order such deed to be made by the clerk of the county court, or a commissioner appointed for that purpose by such court at the cost of the party so refusing. No person shall in any suit not brought for the purpose, within one year after the first day of April eighteen hundred and sixty-nine or otherwise, after the expiration of that time question the validity of such sale or deed or of any sale or deed made before that date, or avoid or impair the effect thereof, to pass the complete title to the real estate sold for any cause that would not be sufficient and proper to avoid a sale or deed hereafter made under the provision of this chapter. Nor shall any person be permitted to prove the payment of taxes, or on account of such payment question the validity of such sale or deed, except as provided in section twenty-seven of this chapter.

When former owner may redeem in such cases.

Party having legal title to re-convey to former owner.

Remedy in case he refuses to do so.

When the validity of such sale not to be questioned.

Payment of taxes: within what time may be proved in such cases.

Deeds to certain purchasers of real estate in 1860.

“48. A person who purchased any real estate within this state, sold in the year eighteen hundred and sixty for the non-payment of taxes due thereon and who has failed to obtain a deed therefor, either by reason of the loss of the receipt of the sheriff for the purchase money, or by his failure to give such receipt may within one year after this act takes effect file his petition in the circuit court of the county in

When and how deeds obtained for lands sold in 1860, where receipts lost or none have been given for purchase money.

When court to order deed to be made to purchaser by clerk.

Taxes to be paid by purchaser.

What title vests in purchaser.

Certain deeds legalized. &c.

which such lands or some part thereof may be, setting forth the person in whose name the same were sold, the quantity and description thereof, the amount of taxes for which they were sold, the amount due thereon at the filing of such petition and the reason why he had not obtained such deed. If the court shall be satisfied of the truth of the facts stated in said petition it shall order a deed for said land to be made to the purchaser, his heirs, devisees or assigns, by the clerk of the county court in the manner provided in this chapter, upon the payment to the sheriff of all taxes due thereon. And such right, title and interest in the said real estate, shall be vested in the grantee in such deed as would vest under a deed for real estate hereafter sold for the non-payment of the taxes due thereon.

“49. All deeds heretofore or hereafter made under the provisions of the eleventh section of the act passed March 2, eighteen hundred and sixty-five, entitled ‘An act to provide for the sale of certain lands for the benefit of the school fund,’ are hereby legalized and made valid. And all such deeds hereafter made under the provisions of the said section, in pursuance of an order of a circuit court heretofore or hereafter entered, shall be made by the clerk of the county court in the manner required by this chapter, so far as its provisions are applicable to such deeds.

Certain general provisions.

Person claiming tract of land may enter part thereof on assessors books, and pay taxes on part entered.

How such entry made.

Effect of such assessment or payment.

“50. Any person owning or claiming any tract of land may have any part thereof entered on the books of the proper assessor, and assessed with taxes thereon, and pay the same, as he might do as to the whole tract, specifying the part of the said land so entered and assessed, or on which the taxes are so paid by reference to a deed or paper, or otherwise, so that it may be conveniently ascertained. Any such assessment or payment as to such part of any land

shall have the like effect as to the same as if it had applied to the whole tract. But such entry, assessment or payment shall not preclude the assessor from entering or assessing the residue of such taxes, if it be proper, or charging the owner thereof with taxes thereon, nor prevent a sale or forfeiture of such residue for the failure to cause the same to be charged with taxes.

Assessor not precluded from assessing residue of taxes.

Nor sale or forfeiture are prevented.

"51. When real estate has been or shall be entered on the land books of the commissioner of the revenue or assessor of any county or district for any year, and thereon charged with taxes, and does not appear in the list of lands and lots or real estate in such county delinquent for non-payment of taxes thereon for such year, upon proper evidence thereof, in the absence of rebutting evidence it shall be presumed that such tax was paid before the time when such list was required to be made.

Taxes on lands entered on assessors books, &c., when presumed to be paid.

"52. If any sheriff or collector shall fail to make the returns of sales of delinquent lands required by this chapter, within the time herein required, he shall forfeit and pay a fine of not less than fifty nor more than five hundred dollars, to be recovered by a motion in the circuit court, which fine shall be for the benefit of of the general school fund, and moreover he shall be liable, under his official bond, to any person aggrieved thereby, for all damages which such person shall suffer by reason of such failure.

Penalty in office for failure to make returns of sales of delinquent lands.

How recovered.

"53. If any sheriff or collector in his list of sales returned and filed for the year 1871, or for any year hereafter, as required by section twelve of this chapter, has or shall omit therefrom any tract or lot of land sold by him for the non-payment of the taxes thereon and purchased by the state, or by any person, or has or shall state therein the name of any purchaser of a tract or lot of land incorrectly, or has or shall state that any tract or lot of land so sold by

If sheriff omit from his list of sales returned, any tract or lot of land sold, or shall state purchasers name incorrectly ;

How remedied.

him was purchased by one person, when in fact it was purchased by another, within six months after the passage of this act, or six months after the sale, upon the petition of such sheriff or collector, or of any person interested, to the county court of the county, notice having been previously given to all parties in interest in which the sale was made, stating any such mistake, and upon satisfactory proof thereof being made, the court shall make an order permitting such sheriff or collector to file with the clerk of said court an 'amended list,' in the form required by said section made out according to the facts proven and stated in said petition, which list, together with the order of the court permitting it to be filed, shall be recorded by said clerk within ten days thereafter, in the book mentioned in section fourteen of this chapter, and the original, together with a copy of said order, shall within ten days thereafter be transmitted by said clerk to the auditor.

Amended list, with whom filed.

Duty of clerk.

List and copy of order to be transmitted to auditor within ten days.

How and when land set out in such amended list, conveyed to purchaser.

"54. The purchaser of any such tract or lot of land as is mentioned in the next preceding section, his heirs or assigns, may file his or their petition in the court mentioned in said section to have the tract or lot of land, set out in such amended list conveyed to him under the provisions of this chapter and upon satisfactory proof that said tract or lot of land has not been redeemed in the manner prescribed by law, and that more than one year has elapsed since the said sale was made, the court shall order a deed therefor to be made to such petitioner by the clerk of said court in pursuance of the provisions of this chapter. And said clerk shall make said deed within the same time and in the same manner and with like effect as if the said tract or lot of land had been correctly entered in the original list filed by such sheriff or collector.

Effect of deed.

The words "clerk of the county court," and "county court;"

"55. Wherever the words "clerk of the county court" occurs in this chapter they shall be deemed

equivalent to and shall be held to mean the clerk of the court or other tribunal having in his keeping, custody or charge the records of deeds or delinquent lands; and where the words "county court" are used therein they shall be deemed equivalent to and shall be held to mean such court or tribunal as may be organized in lieu of the said county court.

"56. It shall be the duty of the sheriff, or other officer making sales of lands by virtue of this chapter, within one month after such sales are closed, to post in the most public place in each magisterial district in his county a list of all sales by him so made, describing the tracts as well as the number of acres sold, and to whom sold.

Sheriff within one month after sale, to post notice in each magisterial district of all sales made by him.

What notice to contain.

"57. When a tract of land heretofore returned delinquent for the non-payment of the taxes thereon, has not been sold as aforesaid by laws, or if sold and purchased by the state, no title thereto has vested in the state, or such tract of land has not become irredeemable; and since the year or years for which said land was charged with the taxes for which it was so returned, the assessment thereof has been corrected by the board for the correction of the land books, or the board of supervisors for the county in which the same was so charged and returned, by placing the value of said tract at a less sum than that placed thereon for such year or years; the previous owner of such tract of land, his heirs or assigns, or any person having a right to charge it for a debt, may redeem the same by paying into the treasury of the state the amount of taxes, interest and damages due, by such corrected valuation, and which would have been properly chargeable thereon, if the value thereof for the years for which it was so returned, had been the same as that so placed thereon by such board: Provided, that the county, township and independent school district taxes due thereon as aforesaid, shall

Land returned delinquent and not sold, or if purchased by the state and no title has vested in the state, &c., who may redeem.

What taxes to be paid into treasury.

What not to be so paid.

not be paid into the state treasury except in the case provided for in this chapter.

Deeds to purchasers
of real estate sold
for non-payment
of taxes; their
validity, &c.

"58. The deed to the purchaser of any real estate sold under the provisions of this chapter for the non-payment of taxes thereon, shall be valid and sufficient to pass to such purchaser, his heirs, devisees or assigns, all the title thereto mentioned in section twenty-five of this chapter, if made in the form or to the effect following:

Form of such deed.

This deed, made this — day of —, 18—, by A— B—, clerk of the county court of the county of —, in the state of West Virginia, (or by A— B—, a commissioner appointed by the circuit court of — county, West Virginia, or by A— B—, a commissioner appointed by the judge of the circuit court of — county, West Virginia, in vacation, by an order made on the — day of —, 18—, as the case may be,) of the first part, and C— D— of the second part;

WHEREAS, In pursuance of the statute in such case made and provided, E— F—, sheriff of the said county, (or E— F—, deputy of G— H—, sheriff of said county, or E— F—, collector of the said county, as the case may be,) did, on the — day of —, 18—, that being the first day of the term of the county court of said county in that year, commence to expose to public sale at the door of the court house of the said county between the hours of ten in the morning and four in the afternoon, the real estate heretofore returned delinquent for the non-payment of the taxes due thereon in the said county of —; and

WHEREAS, At the sale so made as aforesaid, on the — day of —, 18—, (if the date of the sale be different from the date of its commencement, say, "the said sale having been continued in the manner prescribed by law to that day,") the said C— D—, (if the grantee be assignee or heir at law or devisee of the purchaser, say one L— M—, who

has duly assigned the benefit of his said purchase to the said C—— D——, as appears by the paper hereto annexed; or by the signature of the said L—— M—— to this deed; or L—— M——, who has since died, leaving the said C—— D—— his only heir at law or devisee of said real estate, as the case may be,) became the purchaser of a tract (or lot, as the case may be,) of land of —— acres, (or of —— acres of land, being part of a tract of —— acres, as the case may be,) situate in the said county, which formerly belonged to and was returned delinquent in the name of N—— O——, for the non-payment of the taxes due thereon for the year (or years, as the case may be,) 18——, for the sum of \$——; that being the amount of taxes, interest, damages and commissions due thereon at the time of said sale, including fee for receipts; and

WHEREAS, More than one year has elapsed since the date of the said sale, and the said real estate not having been redeemed as provided for by law; and

WHEREAS, After the expiration of the said one year, to-wit: on the —— day of ——, 18——, the said C—— D——, in the manner prescribed by law, caused a report to be made to the clerk of the county court of the said county, (or to the recorder of the said county, as the case may be,) specifying the metes and bounds of the said tract of land so purchased as aforesaid, and giving such description thereof as is sufficient to identify the same, and there being no valid objection to said report, the same was, on the —— day of ——, 18——, ordered by the said clerk (or recorder,) to be recorded in his office, and a record thereof has been made accordingly; (or if the purchase was of part of a tract, say, "caused the quantity of land so purchased to be laid off, and a plat and description thereof to be returned to the clerk of the county court (or to the recorder, as the case may be,) of the said county of ——; and the said clerk (or recorder) having examined the said plat

and description, and finding it correctly made — day of —, 18—; ordered the same recorded in his office, and a record thereof made accordingly, to which record now refer the office of the clerk of the county court of the county of —, reference is here had.

Now, therefore, this indenture witnesses and in consideration of the premises, the first part has bargained and sold and by the doth grant, bargain sell and convey unto the second part, his heirs and assigns the real estate aforesaid, situate in the county (here give the local description, as set out in receipt to the purchaser,) and bounded as follows. Beginning at (here give the boundaries as shown on the survey or report made to the clerk, or containing — acres, be the same more or less) have and to hold the said real estate, with its appurtenances, unto the said C—— his heirs or assigns, forever. If the grantee shall be the assignee of the purchaser, his heirs and assigns, and the assignor joins in the deed, add as follows: the said L—— M——, the purchaser named in this deed, or, I, R—— S——, heir at law, or in the case may be, of L—— M——, the person named in this deed, have assigned the benefit of the purchase to the said C—— D——, and we the undersigned join in this deed.

Witness: the following signature and seals, as the case may be.)

A—— P——,

Clerk of the county court

Inconsistent acts repealed.

2. All acts or parts of acts inconsistent with this act, are hereby repealed.

Commencement.

3. This act shall be in force from and after the passage thereof.

CHAPTER CXVIII.

AN ACT making general provisions for elections by the people, and providing for filling vacancies.

Passed April 11, 1873.

Be it enacted by the Legislature of West Virginia :

1. The general election for state, district, county and county district officers, members of the legislature and congressmen shall be held on the second Tuesday of October.

General elections;
when held.

2. At the said election in 1874, and every two years thereafter, there shall be elected delegates to the legislature, and one senator for each senatorial district, and a representative in the congress of the United States, for the term beginning on the fourth day of March, next after the election, for every congressional district. And in the year eighteen hundred and seventy-six, and every fourth year thereafter, a governor, state superintendent of free schools, treasury, auditor, and attorney general for the state, a prosecuting attorney, one or more judges of the supreme court of appeals, surveyor of lands, sheriff, president of the county court, the number of assessors prescribed by law for each county, constables and justices of the peace, as many as are prescribed by law for each county district. And in the year 1878, and every sixth year thereafter, a clerk of the circuit court, and a clerk of the county court. And in the year 1880, and every eighth year thereafter, a judge for each judicial circuit.

Members of legislature;
of congress;
governor, state
officers, judges,
sheriffs, clerks, &c.,
when to be
elected.

*Amended
175-139*

3. Electors for president and vice-president of the United States, for this state, shall be chosen by the voters of the state, at an election to be held for the purpose on the Tuesday next after the first Monday in November, in the year 1876, and every fourth year thereafter; and at least sixty days before any such election, the Governor, by proclamation published in some newspaper in every county where a newspaper

When electors for
president and
vice president to
be elected.

Governor to give
notice by procla-
mation.

is printed, shall give notice of the time of election and the number of electors to be chosen.

Elections; where held.

4. In elections for all officers herein prescribed and required by the constitution, the polls shall be opened in such counties and divisions as the voters thereof are required to elect the officers to be elected, at the court house and at each of the places of voting prescribed.

Election districts provided for.

5. The county courts of the several counties of this state shall have power, all the justices in and for the same having been summoned for that purpose and entered of record and advertised at the court house, and at each place of voting in and for the same, or by publication in some newspaper published in the county, if one be published therein, thirty days, and a majority of the whole of the justices of the county being present, to increase or diminish the number of districts for election under such re-arrangement shall be made prior to the general election of justices. By publication the county court of each county

How re-arranged, increased or diminished.

Notice to be given.

How separate polls or polls established, discontinued or changed.

may establish, discontinue or change any separate polls in any district in their respective counties at least thirty days' notice has been given at the court house of the county, and at each place of voting in such district prior to such application. After like notice the court may at any time, by a majority of the justices of the county are present, whenever all the justices of the county summoned for the purpose, change the line between any two districts: Provided, that a majority of the justices of the county shall concur in so doing.

How line between any two districts may be changed.

Wards for elections in towns; how changed.

6. The council or councils of any city or town may be authorized, if a majority of the members of the council or councils be present, and concurring in opinion that a necessity exists for changing the order of voting in a ward of such city or town, to order establishing in its stead another plan.

tion in such ward, and upon such order being made the clerk of such council or councils shall forthwith publish the same at such places and in such manner as the council or councils may direct. Nothing contained in this act shall impair the authority of the council or councils of any town over the wards and places of voting therein for such corporate purposes as are under the control of the council or councils, by the charter of said city or town.

Publication of order.

Council control over wards, &c., not impaired.

7. There shall be at least one place of voting in every district in a county, and the elections provided for in this chapter shall be held at the places of voting which have been heretofore, or shall be hereafter appointed for the purpose. The county court, on petition of twenty voters residing in any district thereof, may change or discontinue any place or places of voting therein; when such change or discontinuance is made, the order making the same shall be conspicuously posted at three of the most public places in the district, four weeks before the election, or published in some newspaper, printed in the county, once a week for four consecutive weeks.

Number of places for holding elections.

Where elections must be held.

How places of voting changed or discontinued.

Notice to be given thereof and how.

8. The court for each county and the corporation court for each corporation in which wards are established shall, bi-ennially, before the general election day, appoint three voters, at least, one of whom shall be selected from among those who are of opposite politics, as commissioners at the court house, and the like number in like manner for each place of voting in the county or corporation, to superintend the election of the officers heretofore provided for and prescribed by the constitution at general elections. The three commissioners appointed for this purpose may select one of their number as a conductor of said election; and any two of the commissioners may, in the absence of the third, call to their assistance any qualified voter who may be present. The commissioners of election for each voting district, shall

Commissioners of election; when and how appointed.

Conductor of election.

When commissioner fails to attend, how place filled.

Clerks; how appointed.

appoint two clerks whose duties and compensation shall be as hereinafter provided.

Election to fill vacancies: how commissioners appointed; their power and duty.

9. At an election to fill vacancies, commissioners shall be appointed in like manner as prescribed in the preceding section, be vested with the same powers subject to the same duties and liable to the same penalties as are prescribed in this act for superintending and conducting general elections.

When polls opened and closed.

10. The polls shall not be opened at any election sooner than sunrise, but as soon thereafter as practicable, and shall be closed at sunset.

Who qualified to vote in several elections.

11. In all elections for members of the legislature, governor, state superintendent of free schools, treasurer, auditor, attorney general, judge of the supreme court of appeals, prosecuting attorney, surveyor of lands, sheriff, president of the county court, assessors, clerks of the circuit and county courts, judge of each circuit, constables, justices of the peace, representatives in congress, electors for president and vice-president of the United States, and for all county officers hereafter prescribed by law, the persons qualified as prescribed in the first section of article four of the constitution, shall be entitled to vote.

Privilege of voters.

12. No person shall vote more than once in the same election, and he shall not vote a second time; although he may not have voted the first time for as many persons or officers as he might lawfully have voted for, and no voter shall vote in any other district than that of which he is an actual resident, unless such voter shall satisfy the commissioners conducting the election that he is not offering to vote for any officer for whom he has no right, under the law, to vote.

Penalty for illegal voting and procuring fraudulent votes, &c.

13. If any person knowingly vote, when not legally entitled, or vote more than once in the same election, or knowingly vote or attempt to vote more than one ballot for the same office or on the same question, or

procure or assist in procuring a fraudulent vote to be admitted or received at an election, knowing the same to be bad, or a good vote to be rejected knowing the same to be good, or with intent to deceive any voter, alter or exchange the ballot of such voter by erasing or marking out the name of any person for whom such voter desires to vote; or with like intent write the name of any person on such ballot other than as directed by the voter, whether such ballot be voted or not, shall, upon conviction thereof, be fined not less than one hundred nor more than three hundred dollars.

14. The commissioners appointed to superintend any of the elections before mentioned, whether at the court house on a place for taking a separate poll, shall attend accordingly. They shall admit all persons to vote entitled to do so, and reject the votes of all not entitled to vote, and in all respects have the poll taken fairly according to law. They may swear any person to answer questions in relation to any right to vote which is claimed or challenged, and the name of any person offering to vote, but rejected by them, if required by the person whose vote is so rejected, or any candidate, shall be recorded in a list kept for that purpose.

Powers and duties of commissioners.

15. If only one of said commissioners appointed to superintend any of the elections before mentioned, shall attend and be willing to act, he may associate with himself as commissioners any two voters who may be present; and if none of the commissioners attend, or none shall have been appointed, then any two freeholders present, agreeing to act, with the consent of the voters in attendance at the time, shall act as commissioners. Any such commissioner or commissioners appointed or agreeing to act in the manner prescribed in this section, shall take the same oath, perform the same duties and be subject to the same penalties as if originally appointed.

When commissioners fail to act, how others to be appointed.

Oath, duties and liabilities of such.

Duty of officer conducting elections.

16. Under the superintendence and control of the commissioners it shall be the duty of the officer selected by said commissioners to conduct the election, to cause the polls to be opened publicly for every election in the election district for which he was appointed, and to proclaim and see recorded the votes admitted by the commissioners. He shall cause the necessary poll books to be prepared, and shall deliver to each clerk the book he is to keep, as hereafter provided.

Oath of commissioners, conductor and clerks.

17. All the commissioners, the conductor and clerks appointed for any election, shall, before entering upon the discharge of their duties, take an oath to the following effect: I, A—— B——, do solemnly swear that I will support the constitution of the United States, the constitution of this state, and that in the election about to be held I will faithfully discharge my duties to the best of my skill and judgment. So help me "God." Whenever at the opening of the polls at any place of voting, no person shall be present who is authorized to administer oath, or, if such person being present, shall refuse to administer the oaths herein provided for, the conductor shall administer the same to the commissioners and clerks; and the said oath shall thereupon be administered to him by any one of the commissioners so qualified. The said oath shall appear, properly certified on the poll books of every election; and in no case shall the votes taken at any place of voting be counted, unless said oath so appears on the poll-books.

Who to administer oath.

Oath to be certified on poll book and votes not counted unless so certified.

Clerk of county court to provide and have delivered, ballot boxes, poll-books, &c., for elections.

18. The clerk of the county court shall, at the expense of the county, provide and cause to be delivered in proper time, at every place of voting in the county, proper ballot-boxes, poll-books, tally-papers, and forms for returns, and whatever else is necessary for holding the election, and making due return thereof.

Compensation of officers.

19. Every commissioner, clerk and conductor shall each be allowed one dollar and fifty cents for each

day they shall serve as such. Such allowance, as well as all other expenses attending the elections held in the county, shall be audited by the county court and paid out of the county treasury.

How paid.

20. The conductor shall preserve order at and in the vicinity of the polls, and may direct any disorderly person to be removed by any constable of the district, or other person or persons designated by the conductor, and no warrant or authority in writing shall be necessary; and the jail of the county may be used as the place of custody; but such disorderly person shall not be detained in custody exceeding twenty-four hours, and any person who, being thereto commanded by the conductor, either verbally or in writing, shall fail or refuse to assist, to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall forfeit not less than five nor more than fifty dollars.

Disorder at polls; how prevented.

Power of conductor to order an arrest.

Offender may be imprisoned.

How long.

Penalty on person failing or refusing to assist to preserve order.

21. In all elections by the people the mode of voting shall be by ballot, but the voter shall be left free to vote by either opened, sealed or secret ballot, as he may elect.

Mode of voting.

22. Every person offering to vote at any election shall present to one of the commissioners a single ballot, written or printed, upon white paper. Such ballot shall contain the names of the persons for whom he wishes to vote, and designate the office he desires each of them to fill, but no error or mistake in the designation of the office or person shall vitiate any ballot or cause it to be rejected from the count, if it be manifest what was intended by the voter. The commissioner who receives the ballot shall proclaim distinctly the name of the person offering it, and hand it to the other commissioner, and if both of the commissioners, or, when they differ, one of them and the conductor, are satisfied the ballot is single, and that the person offering it is entitled to

Ballot to be single - written or printed on white paper.

Contents of ballot.

When not affected by error or mistake.

Name of person offering it to be proclaimed.

When ballot to be deposited in box and clerk to record name.

Ballot may be inspected to ascertain if it is single.

Ballot-box to have aperture to receive ballots.

Where kept while polls are open.

Where to remain after polls closed, &c.

When opened.

When to be sealed &c.

Poll book : heading of.

Certain persons not deemed residents.

vote at the said election, one of the commissioners shall deposit the ballot in the box, and the clerks shall enter the name of the voter on their respective poll-books, numbering them in the order in which they vote. The conductor and commissioners may inspect every ballot before it is deposited in the box, to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its contents.

23. The ballot box shall have an aperture in the lid or top to receive the ballots of the voters. While the polls are open it shall be kept where it may be seen by the voters, and shall not be removed from the table until the polls are closed, and after the polls are closed until the votes are counted and the certificates of the result are signed, shall remain in the immediate custody of the conductor and commissioners or any two of them, or in the custody of a commissioner and at least one of the clerks, with the consent of the others, but the seal shall not be opened unless three of said election officers are present, and if left at any time in the custody of two of them it shall be carefully sealed so that it cannot be opened on any ballot taken therefrom or entered therein without breaking the seal, and the others shall write their names across the place or places where it is sealed.

24. Every poll-book shall have on the first page thereof the following headings :

“Names of all persons voting at — in the district of — and county of —, this — day of —.” The two poll-books or lists of the names of the voters shall be kept at every place of voting.

25. No person in the employ of any incorporated company shall be deemed a resident of any county or county district by reason of his being employed therein, and if any person be a resident of any county or county district at the time he entered such service or the service of this state, his residence, unless he

makes known his intention to change the same, shall be considered as continuing in the said county or county district during said service, although he be stationed or employed elsewhere.

26. As soon as possible after the polls are closed the names entered on the poll-books shall be counted by the commissioners and clerks in the presence of the conductor and the number thereof, in words, be set down, at length, at the foot of the lists which shall then be signed by the commissioners and clerks. The ballot-box shall then be opened and one of the commissioners taking therefrom one ballot at a time, in the presence of all the other officers shall read therefrom the designations of the offices to be filled and names of the persons voted for, for each office, and hand the ballot to the other commissioner, who, if satisfied that it was correctly read, shall string it on a thread. The contents of the ballots as they are read shall be entered by the clerks under the supervision of the conductor and commissioners, on tally papers for the purpose, by suitable marks made opposite to or under the name of each person voted for so as to show the number of votes received by every person for any office to be filled. The ballots shall be counted as they are strung upon the thread; and whenever the number shall be equal to the number of voters entered upon the poll-books, the excess, if any, remaining in the ballot-box shall be immediately destroyed, without unfolding or unrolling the same, or allowing any one to examine or know the contents thereof.

Votes : when and how counted.

Excess of ballots over names on poll-books to be destroyed.

27. If two or more ballots be found folded or rolled together, and the names thereon to be the same, all but one of them shall be destroyed; but if the names thereon be different, they shall all be destroyed; and if any ballot be found to contain more than the proper number of names for any office, that first on the ballot shall only be counted as to the said office. In any

If two or more ballots be folded together, containing same name, all but one to be destroyed.

If names different all to be destroyed.

Ballot for senator;
when not counted.

election in a senatorial district where two or more persons are to be chosen as senators for such senatorial district, unless the ballot shall show the respective residences of the parties voted for, it shall not be counted for either.

Return of result
of election; when
and how made

28. As soon as the results are ascertained the commissioners or the conductor and one of the commissioners, shall sign two certificates thereof to the following effect:

“We, the undersigned, who acted as commissioners (or as conductor and commissioner, as the case may be,) of the election held at —, in the district of —, and county of —, on the — day of —, do hereby certify that, having been first duly sworn, we have fairly and impartially held the said election according to law, and the result thereof is as follows: For the office of — (here designate the office, as, for example, ‘delegate for the county of Barbour,’ or ‘delegate for the first district,’ or ‘senator for the first senatorial district,’ ‘judge for the first circuit,’ ‘representative in the congress of the United States for the first congressional district,’ ‘governor of the state,’ ‘judge of the supreme court of appeals,’ ‘justice of said district,’ and so-forth, as the case may be.) ‘A—— B—— received —— votes; C—— D—— received —— votes; E—— F—— received —— votes,’ and so on throughout, stating, according to the truth, the full name of every person voted for for every office, and in words, at length, the number of votes he received for the same; and concluding as follows: ‘Given under our hands this —— day of ——.’ The said certificates shall correspond in all respects with each other, and each shall contain complete returns of the polls taken at the said place of voting for every office to be filled. When the said certificates are signed, the ballots shall be inclosed by the commissioners, or the conductor and one of the commissioners, in an envelope, which they shall

What certificate to
contain.

Duty of commis-
sioners as to poll-
books, ballots and
certificates; when
and to whom de-
livered.

seal up and indorse on the outside of the said envelope, as follows: 'Ballots of the election held at —, in the district of — and county of —, the — day of —.' The commissioners, or one of them, shall, within four days, including Sundays, after the day on which the election was held, deliver the ballots so sealed up, one set of poll-books and one set of the said certificates to the clerk of the county court, and the other certificate and set of the poll-books to the clerk of the circuit court."

29. The commissioners appointed to conduct the election at the court house shall convene on the fifth day (Sundays excepted) after every election held in their county or any district thereof, and the officers into whose custody the ballots, poll-books and certificates have been placed shall lay the same before them for examination. The commissioners may, if deemed necessary, require the attendance of any of the commissioners or other officer or persons present at the election to answer questions under oath respecting the same, and may demand the production of the ballots, poll-books and certificates concerning the said election filed in the office of the clerk of the county court; and make such other order as shall seem proper to procure correct returns and ascertain the true result of the said election in their county. They may adjourn from time to time and when a majority of the commissioners are not present their meeting shall stand adjourned till the next day, and so from day to day till a majority be present. They shall upon a demand by any two voters present or any one of the candidates voted for at such election, open and examine all or any one of the sealed packages of ballots, but in such case they shall seal up the same again along with the original envelopes in another envelope, and the conductor or one of the commissioners shall write his name across the place

When commissioners to meet to examine returns.

Commissioners may require the attendance of certain persons, or demand production of ballots, poll-books, &c.

May adjourn from time to time.

May open and examine sealed packages of ballot.

Ballots; how disposed of afterwards.

or places where it is sealed and endorse on the outside, "ballots of the election held at — in the district of — and county of —, the — day of —." When they have made their certificates and declared the result as hereinafter provided, they shall deposit the sealed packages of envelopes in the office of the clerk of the county court, who shall carefully preserve the certificates, poll-books and ballots so deposited with him. The clerk of the county court shall preserve the sealed packages of ballots for one year and then destroy them without opening said packages; and shall enter such result upon the county records.

Clerk of county court to preserve poll books, &c., deposited in his office.

When ballots to be destroyed.

How contests for county and district officers decided.

Notice.

What notice must contain.

Counter notice.

Notice must be verified.

Additional notice in case new facts discovered.

30. In all contested cases the county court shall be the judge of the election, qualification and returns of its own members, and of all county and district officers. Any person intending to contest the election of any officer enumerated above, shall within ten days after the result of such election is declared, give him notice in writing and a list of the votes he will dispute, with his objections to each and of the votes rejected for which he will contend. If the contestant object to the legality of the election, or the qualification of the persons returned the notice shall set forth the facts on which such objection is founded. The person whose election is contested for any county or district office shall within ten days after he receives such notice, deliver to the contestant a like list of the votes he will dispute and of his objections to each, and of the rejected votes he will claim; and if he has any objection to the qualification of the contestant shall specify in such notice the facts on which the objection is founded. Each party shall append to his notice his affidavit, that the matters therein set forth are true, according to his knowledge and belief.

31. If new facts be discovered by either party after he has given notice as aforesaid, within ten days after such discovery he may give an additional notice or

otices to his adversary, with specifications and affidavit as above prescribed.

32. Subpœnas for witnesses shall be issued by the clerk of the county court, and the witnesses shall be entitled to the same allowance and privileges and be subject to the same penalties as witnesses attending said court in civil suits. At its November term, or if no term be held in the month of November at the next term thereafter, the court may hear such evidence as may be brought before it; and may, if necessary, require the production of the poll-books, certificates and ballots deposited with the clerk of the county court and examine the same. They may continue the hearing from time to time if it be shown that justice and right require it, but not beyond the time designated for such officer to qualify. The court shall declare the result and cause the same to be entered upon the records of the court. The costs in such case if the contestant fail to set aside the election, shall be awarded against him, including the amount of costs incurred by the person so declared elected. Otherwise each party shall pay his own costs unless it appear to the court that the person returned or declared elected by the commissioners was guilty of fraud or malpractice in the election, or in procuring such return or declaration, in which case costs shall be awarded against him in favor of the contestant. The amount of costs shall be ascertained by the county court which decides the case, and a certificate thereof authenticated by the signature of the presiding officer shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment; and if such costs be not paid within ten days after the date thereof, the clerk of the county court may issue execution on such certificate, upon its delivery to him in like manner as upon a judgment of the said court.

Attendance of witnesses, how enforced.

His pay.

When court to hear testimony.

Court may require production of poll-books.

May continue case from time to time. Limit to such continuances.

Court to declare result and have it recorded.

Costs: against whom awarded.

How ascertained, and payment enforced.

34. Though illegal votes be received or legal votes be rejected at any place of voting, the returns of the

How far returns affected by proof of illegal votes received, or legal votes rejected.

votes taken at such place shall not be set aside for that cause, but it may be shown by proper evidence before the final judges of election for whom such illegal votes or any of them were cast, or for whom the legal votes which were rejected would have been given, and so far only as is so shown the returns shall be corrected.

After result declared commissioners, if demanded, to give copy of certificate of election to each person elected.

35. When the result of an election is declared by the commissioners, pursuant to section twenty-eight, the said commissioners shall cause a copy of the certificate, signed by them severally, to be delivered, if demanded, to each person thereby declared elected, and such copy shall be received in all courts and places as legal evidence of the result of the election therein declared, subject, however, to the provisions of section thirty-two of this act.

Effect of such copy as evidence.

Commissioners in state elections.

36. When an election is held in a county for any of the following officers, that is to say, for delegate, senator, governor, state superintendent of free schools, treasurer, auditor, attorney general, judge of the supreme court of appeals, judge of a circuit court, representative in the congress of the United States, and electors of president and vice president of the United States, the commissioners authorized by the twenty-seventh section of this act of each county in which such election is held, and under such regulations as in said section is prescribed, shall carefully and impartially ascertain the result of the said election in their county, and sign their several names to as many several certificates thereof as may be necessary, to the following effect:

Certificate of election for state officers, congressmen &c.

How certified.

“The commissioners of election for the county of —, having carefully and impartially examined the returns of the election held on the — day of —, do hereby certify that in the said county for the office of —, A— B—, received — votes, C— D—, — votes, and E— F— — votes. In witness whereof, we, the said commissioners, have

annexed our several signatures to this certificate this — day of —."

The said commissioners shall sign separate certificates of the result of the election within their county for each of the officers specified in this section, which is to be filled; and in the said certificates shall be set forth, according to the truth, the full name of every person voted for, and in words at length the number of votes he received for any office.

Separate certificates to be signed.

What to contain.

37. The certificate of the commissioners made pursuant to the preceding section, shall be by them disposed of as follows: Of the certificates respecting the election for delegate or delegates, they shall transmit one to the secretary of state who shall submit the same to the house on the first day of the ensuing session, together with a list of the persons appearing thereby to be elected. The said commissioners shall also deliver one if demanded to each person appearing to them to have been elected as delegate. Of the certificates respecting the election of senator they shall transmit one to the secretary of state to be submitted by him to the senate on the first day of the ensuing session together with a list of persons appearing thereby to be elected. One of the said certificates shall also be transmitted to each person voted for as senator. Of the certificates respecting the election for governor, state superintendent of free schools, auditor, treasurer and attorney general, they shall be sealed up and transmitted by the returning officers to the secretary of state, directed to the "Speaker of the house of delegates," endorsed on the envelope as follows: "Returns of the election for governor, state superintendent of free schools, auditor, treasurer and attorney general," and the speaker shall immediately after the organization of the house and before proceeding to business, open and publish the same in the presence of a majority of each house of the Legislature, which bodies shall for that pur-

Certificates of result of election; disposition of.

Election of delegates and senators to be sent to secretary of state.

Secretary's duty as to such certificates.

Of state officers to be sent to secretary of state and directed to speaker or house delegates.

Endorsement thereon.

Duty of speaker as to opening and publishing same.

Who declared
elected.

Tie vote; how
decided.

Certificate of elec-
tion of judges, con-
gressmen and presi-
dential electors to
be transmitted to
the governor.

His duty thereon.

How and when
governor, house of
delegates or senate
may send for pro-
per returns, poll
books, &c.

When legislature or
commissioners to
decide tie vote.

Elections to fill va-
cancies; for what
time.

How superintended
and conducted, and
result ascertained.

pose assemble in the hall of the house of delegates. The persons having the highest number of votes for either of said offices shall be declared duly elected thereto; but if two or more have an equal and the highest number of votes for the same office, the legislature shall by joint vote, choose one of such persons for said office. Of the certificates respecting the election for judge of the supreme court of appeals, judge for a circuit, representative in the congress of the United States, and electors of president and vice president of the United States, respectively; the commissioners shall transmit one in each case to the governor, who shall ascertain who are elected and make proclamation thereof. In every case the certificates shall be transmitted as aforesaid.

38. Whenever the governor, senate or house of delegates, for any reason deem it proper, they may, by special messenger or otherwise, send for and procure proper returns from any county or counties, and the poll-books, ballots and certificates of the commissioners of county districts, deposited in the offices of the clerks of the county courts, shall be at all times subject to the orders of the governor, or of either branch of the legislature.

39. When the legislature or commissioners of a county are to declare the result of an election, and it appears to them that two or more of the persons voted for have received an equal number of votes, so that the election to the office is not decided by the returns, they shall decide the tie by electing one of said persons.

40. Elections to fill vacancies shall be for the unexpired term, and shall be held at the same place as the other elections, and superintended, conducted and returned and the result ascertained, certified and declared in the same manner and by the same officers; and the persons elected, having first duly

qualified, shall enter upon the duties of their respective offices.

When person elected to enter upon duties of office.

41. In case of the death, conviction or impeachment, failure to qualify, resignation, removal from the seat of government, or other disability of the governor, the president of the senate shall act as governor until the vacancy is filled or the disability is removed; and if the president of the senate, for any of the above-named causes shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of delegates; and in all other cases where there is no one to act as governor, one shall be chosen by joint vote of the legislature. If the vacancy occur before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy. The president of the senate, or such officer as shall succeed to the office of governor, shall issue a proclamation fixing the time for holding an election to fill the vacancy, which shall be published in one newspaper in each county where a paper is printed, at least thirty days' prior to such election, directed to the commissioners of election in the several counties, who shall proceed in the manner prescribed for conducting elections.

Vacancy in office of governor, by whom filled.

When new elections for governor shall take place.

Proclamation of such election; by whom made.

How published.

Within what time.

To whom directed.

42. When a vacancy occurs in the office of judge of the supreme court of appeals, or of any judge of any circuit, the governor shall issue a writ of election to fill such vacancy for the residue of the term, and by proclamation fix the time for holding the election, and requiring the commissioners for conducting elections in the several counties, to hold the election; and if the election be to fill a vacancy in the office of judge of the supreme court of appeals, the proclamation shall be published in one newspaper in each county where a paper is printed, at least thirty days prior to such election, directed to the commissioners of elections in the several counties of this state, who

Vacancy in the office of judge,

Governor to issue writs of election to fill vacancy.

Governor to give notice of election by proclamation

Publishment of proclamation when vacancy is in office of judge of court of appeals.

When to fill vacancy in office of judge of circuit court.

Provide if the unexpired term be less than two years.

Vacancy in office of auditor, treasurer, &c., to be filled by governor until a successor be elected and qualified.

Governor also to issue proclamation fixing time for holding election to fill vacancy.

Publication of proclamation.

To whom returns made.

Returns of election to be handed to governor, who shall count the votes and declare the result.

Vacancy in representation from this State in congress.

How filled.

Governor to give notice by proclamation.

How published.

shall proceed in the manner prescribed for conducting elections; and if it be an election to fill a vacancy in the office of judge of a circuit court, the proclamation shall require an election to be held to fill such vacancy in the several counties composing the circuit, and to be published in at least one newspaper in each county where a newspaper is printed, for at least thirty days prior to such election; and if no newspaper be printed in such circuit, to be published in such manner as to him shall seem best: Provided, that if the unexpired term be less than two years, the governor shall appoint a judge to fill such vacancy. If the office of auditor, treasurer, state superintendent of free schools, or attorney general, shall become vacant by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified; and the said governor shall, moreover, issue his proclamation fixing the time for holding said election, and requiring the commissioners of elections in the several counties of this state to hold an election to fill such vacancy in the manner prescribed for holding elections in other similar cases; which proclamation shall be published in at least one newspaper in each county where a newspaper is printed, for at least thirty days prior to such election; and the commissioners shall make return of such election as required by section thirty-seven of this act for the offices of governor, state superintendent of free schools, auditor, treasurer and attorney general; which returns, as received, shall be handed to the governor, who shall count the votes, and, by proclamation, declare the result of the election. If there be a vacancy in the representation from this state in the congress of the United States, the governor shall, within ten days after the facts come to his knowledge, give notice thereof by proclamation, to be published in such newspapers in the district where such vacancy may occur, as he may

deem best calculated to give information thereof to the voters of such district; and in such proclamation he shall appoint some day, not over sixty nor less than thirty days from the date thereof, for holding the election to fill such vacancy, which election shall be held accordingly by the commissioners of elections in the several counties composing the district, whose duty it shall be to hold the election to fill such vacancy, and make return thereof as prescribed for a regular election for a member of congress. In case of a vacancy during the recess of the senate in any office which is not elective, and whose appointment is not otherwise provided for by law, the governor shall, by appointment, fill such vacancy until the next meeting of the senate, when he shall make a nomination for such office, and the person so nominated, when confirmed by the senate, (a majority of all the senators elected concurring by yeas and nays,) shall hold his office during the remainder of the term and until his successor shall be appointed and qualified. No person after being rejected by the senate shall be again nominated for the same office during the same session, unless at the request of the senate; nor shall such person be appointed to the same office during the recess of the senate. When he shall make a nomination for such office, the person so nominated, when confirmed by the senate, shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. The bond, if any be required by law to be given by any officer so temporarily appointed by the governor, shall be in such penalty as the governor may direct.

When election to be held.

Returns: how made.

How vacancy filled in cases where the officer is appointed by and with the advice and consent of the senate.

When appointment to fill such vacancy expires.

No person rejected by senate shall be again nominated for same office, unless at request of senate.

Nor shall such person be appointed during recess to same office.

Term of office of person confirmed by senate.

Bond of officer temporarily appointed.

Vacancy in legislature; how filled.

Occurring in recess, writ to fill to be issued by governor; during session, by speaker of house or president of senate, &c.

43. A writ of election to fill a vacancy in the legislature shall be issued by the governor, when the vacancy occurs during the recess of the legislature, and by the president of the senate or speaker of the house of delegates, as the case may be, when such vacancy happens during the session or has not been previ-

To whom directed.

ously filled. The said writ shall be directed to the sheriff of the proper county or to the sheriffs of the several counties included in the delegate or senatorial district as the case may be, and shall prescribe the day of election; and every sheriff on receiving the same shall immediately give notice thereof to the commissioners of elections in the several districts of his county; and shall also cause notice of the same to be conspicuously posted at every place of voting in such county and to be published in the newspapers if there be any printed therein.

Notice of election :
how published and
posted.

Vacancy in the
office of clerk of
the circuit court :
how filled.

44. When a vacancy shall occur in the office of a clerk of the circuit court the judge of the circuit court shall appoint a clerk who shall discharge the duties of the office until the vacancy shall be filled; and the president of the county court, either in term time or vacation shall appoint a time for holding an election to fill the vacancy, and shall issue a writ of election, directed to the commissioners of election of the county, requiring them to hold an election to fill such vacancy. The commissioners shall give notice of such election by advertisement in a newspaper if one be printed in the county, if not, in such other manner as to give full notice of the said election; said election shall be held and conducted and returns made thereof as required in other similar elections.

Writ of election :
by whom issued.

To whom directed.

Notice of election :
how given.

In office of clerk of
county court; how
filled.

Clerk of circuit
court ex-officio
clerk.

When and how
writ of election to
fill vacancy issued.

Notice to be given.

And if a vacancy occur in the office of clerk of the county court, the clerk of the circuit court shall, ex-officio, be clerk of the county court and discharge the duties of the office until the vacancy shall be filled; and the president of the county court either in term time or vacation, shall appoint a time for holding said election and issue a writ of election directed to the commissioners of elections of the county, requiring them to hold an election to fill such vacancy. The commissioners shall give notice of such election by advertisement in a newspaper if one be published in the county, for at least thirty days prior to such election; if not, in such other manner as to give full no-

tice of the said election; said election to be held and conducted and returns made thereof as required in other similar elections. When a vacancy occurs in the office of president of the county court it shall be filled until the next regular election by the justices of the county, all of whom shall be summoned for that purpose; and when a vacancy occurs in the office of justice of the peace it may be filled until the next regular election, by the county court. When a vacancy occurs in the office of prosecuting attorney, sheriff, surveyor of lands, assessor or constable, the president of the county court, either in term time or vacation, shall appoint a time for holding an election to fill the vacancy, and shall issue a writ of election directed to the commissioners of elections of the county to hold an election to fill such vacancy. The commissioners shall give notice of such election by advertisement in a newspaper at least thirty days prior to such election, if one be published in the county, if not, in such manner as to give full notice of said election. But if the election be to fill a vacancy in the office of constable no notice shall be published in a newspaper, but shall be made in such other manner as to give full notice of the said election; said election to be held and conducted and returns made thereof as in similar elections.

How returns made.

Vacancy in office of president of county court to be filled by justices of county until regular election,

In office of justice, to be filled by county court.

In office of prosecuting attorney, sheriff, surveyor, assessor, &c., how vacancy filled.

Notice to fill vacancy in office of constable not to be published in newspaper.

45. If any officer fail to perform any duty required of him in relation to an election, and there be no other penalty or punishment imposed for such failure, he shall forfeit not less than five nor more than fifty dollars for every such offence.

Penalty on election officer failing to perform official duty.

46. If a conductor or commissioner of election fail or refuse without sufficient cause, to attend at the proper time and place for holding any election which it is his duty to assist in holding, he shall forfeit not less than five nor more than thirty dollars for every such offence.

Penalty on conductor or commissioner for failure to attend election, &c.

On officer whose duty is to assist in holding elections and refuses, &c., or neglects to deliver poll-books, ballots, &c., or to make proper returns.

47. If any officer whose duty it is to assist in holding an election being present at the time and place for holding the same, refuse to do so when required by a candidate or voter; or if any officer neglect to deliver the ballots, poll-books or certificates as required by law or to make returns in the manner or at the time prescribed by law, he shall forfeit for every such offense not less than ten nor more than one hundred dollars; or if any officer refuse to deliver the ballots, poll-books or certificates at the time prescribed by law, he shall forfeit for every such offense not less than fifty nor more than two hundred dollars and be confined in the county jail not less than thirty nor more than ninety days.

Penalty for making false count, certificate or return, &c. knowingly.

48. If a conductor or commissioner of election or any person acting as such, or as clerk or writer at any election make or procure to be made or assist in making, any false count, certificate or return concerning an election, knowing the same to be false; or a commissioner of election at the court house assist or concur in making, or procure to be made any false count, certificate, return or declaration concerning an election, knowing the same to be false, he shall forfeit not less than one hundred dollars nor more than five hundred dollars and be imprisoned not exceeding six months for every such offense.

Penalty for using force or intimidation at elections.

49. Any person who shall by force, menace, fraud, or intimidation, prevent or attempt to prevent any officer, whose duty it is by law to assist in holding, conducting or superintending an election, or in counting the votes cast thereat, and certifying and returning the result thereof, from discharging his duties according to law, or who shall by violence, threatening, gestures, speeches, force, menace or intimidation, prevent or attempt to prevent an election being held; or who shall in any manner obstruct or attempt to obstruct the holding of an election; or who shall by any manner of force, fraud, menace, or intimidation

For attempts to prevent officers from discharging their duties.

For attempts to prevent elections being held.

prevent or attempt to prevent any voter from attending any election, or from freely exercising his right of suffrage at any election at which he is entitled to vote, shall be guilty of a misdemeanor and fined not less than one hundred nor more than five hundred hundred dollars for every such offense; and at the discretion of the court, may be imprisoned in the county jail not more than three months.

For attempts to prevent voter from attending election.

50. If any person directly or indirectly accept or take any gift, reward or profit, or any promise, bond, covenant, engagement or security of any kind for reward or profit, under an agreement express or implied, or with the intent that, at any election he will vote for a particular candidate; or that he will give his vote in any particular manner, or upon any particular side of any question to be decided at such election; or that he will make, or procure to be made, or assist in making or procuring to be made, any false count, certificate, return or declaration concerning any election; such person, and the person who shall make such gift, or pay such reward or profit, or make such promise, bond, covenant, engagement or security, or aid or abet another in so doing, shall each forfeit not less than one hundred dollars nor more than five hundred dollars, and be imprisoned not exceeding sixty days for every such offense.

Bribery in elections how punished.

51. If any person bet or wager money or other thing of value on any election held in this state, he shall forfeit the value of such money or other thing, and be fined not exceeding fifty dollars in addition thereto for every such offense.

Betting on elections how punished.

52. Any person elected to any office under the constitution and laws of the state shall forfeit his office, if it shall be proved that on the day on which he was elected he offered to sell or give, or did sell or give any intoxicating drink, and if any person offer, give, sell to or distribute any intoxicating drink to any voter on the day of an election, he shall forfeit

Candidate offering to sell or give, or did sell or give intoxicating drink on day of election, forfeits his office if elected.

Penalty on any person for like offence.

not less than twenty dollars nor more than one hundred dollars for each offense.

Places where liquor sold to be kept closed on day of elections.

Penalty, whether licensed or not, for selling, offering, or exposing for sale intoxicating liquors on day of election, or for keeping open any place where liquors are usually sold.

Provision as to places where other business is conducted.

53. Every place at which intoxicating liquors are sold shall be kept closed on the day of the election; and if any person (whether licensed to sell intoxicating liquors or not) shall, on the day of any election, sell or offer or expose for sale such liquors, or shall on either of said days, at any time, keep open any place in his possession, or under his control, where such liquors are usually sold, or shall permit any person to drink any intoxicating liquor on the day of an election, at any place in his possession or under his control, he shall be guilty of a misdemeanor and fined not less than fifty dollars nor more than one hundred dollars for every such offense: Provided, that this section shall not be so construed as to require any person licensed to sell intoxicating liquors, who is engaged in any other business in connection therewith, to close his place of business as aforesaid, except the part thereof in which such liquors are usually sold.

Drunkenness at elections; when and how punished.

54. If any person be drunk at or near the place of holding an election on the day the same is held, he shall be guilty of a misdemeanor and fined not less than ten dollars nor more than fifty dollars, and shall, moreover, be required to give security for his good behavior for six months. If he fail to give such security, he shall be imprisoned not less than five nor more than twenty days.

Members of the Legislature.

Contest of election of delegate or senator.

What notice to be given by contestant in case of a delegate.

What in case of a senator.

What notice to contain.

55. Any person intending to contest the election of another as senator or delegate shall, within twenty one days after the certificate of election has been issued in case of delegate, and within forty days after the election in case of a senator, give him notice thereof in writing and a list of the votes he will dispute, with his objections to each, and of the votes re-

jected for which he will contend. If the contestant object to the legality of the election or the qualification of the persons returned, the notice shall set forth the facts on which such objection is founded. The person whose election is contested as delegate shall, Counter notice. within fourteen days after he receives such notice, Within what time to be given. and the person whose election as senator is contested shall within thirty days after he receives such notice deliver to the contestant a like list of the votes he will dispute and of his objections to each, and of the rejected votes he will claim; and if he has any objection to the qualification of the contestant, shall specify in such notice the facts on which the objection is founded. Each party shall append to his notice his affidavit that the matters therein set forth are Notices must be verified. true, according to his knowledge and belief.

56. Where, however, such contest arises upon special election to fill a vacancy, held at any other time than the second Tuesday of October, the notice with specifications and affidavit as above, shall be given by the contestant within ten days after the certificate of election has been issued, Contest arising out of special election. in case of a delegate and within thirty days after the election in case of a senator, and by the party whose election is contested, in the first case within five days and in the second twenty days.

57. If new facts be discovered by either party after he has given notice as aforesaid, he may within ten days after such discovery give an additional notice or notices to his adversary with specifications and affidavit as above prescribed. If new facts be discovered, additional notice must be given.

58. Either party may begin to take the depositions at any time after the delivery of the original notice by the contestant. But reasonable notice of every such deposition shall be given and such notice shall specify the names of the witnesses to be examined. Depositions; when taken. The depositions may be taken before a justice, notary or any officer authorized to take depositions in Notice of shall specify names of witnesses. Before whom taken

civil suits; and the officer before whom they are taken, shall certify and seal up the same and endorse his name across the place where they are sealed and address and transmit the same by mail or otherwise to the clerk of the house in which the seat is contested. When the petition of the contestant is referred to a committee, the clerk shall deliver the depositions to such committee for examination and report.

How certified, &c.
To whom sent.
When sent by clerk to committee.

59. Subpœnas for witnesses shall be issued by the clerk of the circuit court, clerk of the county court, or by a justice, upon application of either party; and witnesses shall be entitled to same allowances and privileges, and be subject to the same penalties as if summoned to attend before the said court or justice in civil suits.

Subpœnas for witnesses by whom issued.
Allowances, privileges and penalties of such witness.

60. If the contest arise respecting any election held on the second Tuesday of October, the parties shall finish taking depositions five days at least before the second Wednesday of January next following; but if it arise upon a special election to fill a vacancy held at any other time, they shall finish within thirty days after the certificate of election has been issued in the case of a delegate, and sixty days in the case of a senator.

When parties must finish taking depositions.

61. The petition of the contestant shall be presented to the proper house of the legislature, within ten days after its meeting, if the disputed election was held at the regular annual period; or if it was a special election to fill a vacancy, within twenty-five days after the taking of the testimony is completed.

When petition of contestant to be presented.

62. If it be ascertained that an equal number of legal votes were given for the petitioner and the person returned, the senate or the house of delegates, as the case may be, in which the contest is pending, shall declare which of them is elected.

How contest decided in case of a tie vote.

63. If the election of governor, state superintendent of free schools, treasurer, auditor, attorney general, judge of the supreme court of appeals, or judge

of a circuit court be contested, the contestant must give notice with specifications and affidavit, to the person whose election is contested within sixty days thereafter; and within thirty days thereafter the party whose election is contested shall in like manner give notice to the contestant. The parties shall finish taking depositions within forty days after the last mentioned notice is delivered. The depositions shall be transmitted to the clerk of the house of delegates, to be delivered by him to the joint committee or special court hereinafter provided for. In other respects the regulations contained in this chapter respecting contests for seats in the legislature shall be observed so far as they are applicable.

Counter notice.

When taking of depositions to cease.

To whom depositions transmitted.

Duty of clerk of house of delegates.

64. When the election of governor is contested the petition of the contestant and the depositions shall be referred to a joint committee of the two houses of the legislature for examination and report; which committee shall consist of two senators elected by ballot by that house and three delegates elected in the same manner by the house of delegates. The contest shall be determined by the legislature, both houses of the legislature thereof sitting in joint session in the hall of the house of delegates, the speaker of which house shall preside.

Contest in case of governor; how tried and determined.

65. Where the election of state superintendent of free schools, treasurer, auditor, attorney general, or of a judge of the supreme court of appeals or a circuit court is contested, the case shall be heard and decided by a special court constituted as follows:

How contest in case of other state officer or judge tried and determined.

The person declared elected shall select one, the contestant another, and the governor a third person, who shall preside in said court; and the three, or any two of them, shall meet at a time and place to be appointed by the governor, and being first duly sworn impartially to decide according to law and the truth upon the petition, returns and evidence to be sub-

How special court constituted.

Time of meeting of such court.

Oath of office.

To whom decision
certified.

Pay and mileage.

How paid.

mitted to them, shall proceed to hear and determine the case, and certify their decision therein to the governor. They shall be entitled to the same pay and mileage as members of the legislature, to be paid out of the treasury of the state; but their compensation shall not, in any case, exceed forty-five dollars each exclusive of mileage.

Costs of contested
elections; how as-
certained, by whom
paid how certified
and payment en-
forced.

66. The costs of every contested election shall include only the expenses of serving notices, taking of depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions by the person taking the same. If the contestant fail in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring such return or declaration; in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the branch, joint session or court which decides the case, and a certificate thereof, authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment, and if such costs be not paid within ten days after the date thereof, the clerk of the circuit court of the county in which the party against whom the costs were awarded resides, may issue execution on such certificate upon its delivery to him in like manner as upon a judgment of the said circuit court. But no person contesting the seat of another in the legislature shall be entitled to pay or mileage if his contest fail.

67. That wherever the words "county court" occur in this act, they shall mean and include not only the words "county court," but such other court as may be established in lieu of a county court.

Meaning of the words "county courts."

68. Nothing contained in this act shall be construed to invalidate any provision for the election of school officers as provided by the general school law of the state.

Provisions of school law for election of school officers, not to be invalidated by this act.

69. This act shall be in force from its passage.

Commencement.

CHAPTER CXIX.

AN ACT to amend and re-enact sections four and eight of chapter eighty-six of the code, concerning duties of personal representatives as to real estate and the liability of such estate for the decedent's estate.

Passed April 8, 1873.

Be it enacted by the Legislature of West Virginia:

1. That sections four and eight of chapter eighty-six of the code be amended and re-enacted so as to read as follows:

Sections amended.

"4. Such assets, so far as they may be in the hands of the personal representatives of the decedent may be administered by the court in whose clerk's office there is or may be filed a report of the accounts of such representative and of the debts and demands against the decedent's estate; or they may in any case be administered by a court of equity."

How real estate of decedent may be administered.

"8. No decree for the distribution of the proceeds of the real estate of such deceased person among his creditors shall be made until a notice to such creditors to present and prove their claims shall have been published and posted as hereafter provided,

No decree for distribution of proceeds of real estate to be made till notice given, &c.

which notice shall be in the following form or to the same effect :

Notice to creditors.

Form of notice.

“ To the creditors of A—— B——, deceased : In pursuance to a decree of the —— court of the county of ——, made in a cause therein pending to subject the real estate of the said A—— B——, to the payment of his debts, you are required to present your claims against the said A—— B——, for adjudication to C—— D——, commissioner at his office in the said county on or before the —— day of ——.

Witness, E—— F——, clerk of said court, this —— day of——.

E—— F——, clerk.

Commencement

2. This act shall be in force from its passage.

CHAPTER CXX.

AN ACT relating to oaths of office.

Passed April 11, 1873.

Be it enacted by the Legislature of West Virginia :

Oath of officers.

1. Every person elected, except as member of the legislature, or appointed to any office or public trust, civil or military, shall, except when it is otherwise provided, before proceeding to exercise the authority, or discharge the duties of the same, make oath or affirmation, that he will support the constitution of the United States and the constitution of this state, and that he will faithfully discharge the duties of his office (or trust) to the best of his skill and judgment : Provided, that persons who may have been elected to office on the twenty-second day of August, 1872, and who may have taken the oath prescribed by the fifth section, fourth article of the constitution, since the twentieth day of December, 1872, before any

Persons elected August 22, 1872, who have qualified not so qualify again.

person authorized to administer an oath, are not required to take said oath again.

2. The first section of this act shall not apply to the case of a person residing in another state or country, who is appointed by the governor, or designated, pursuant to law, for any office, agency or service to be performed out of the state, or an executor, administrator, guardian, curator, committee, trustee or person authorized to celebrate the rites of matrimony.

To what persons first section does not apply.

3. The oaths aforesaid may be taken before any court of record, or before any person now or hereafter authorized to administer an oath. Any person residing in another state or locality, who is appointed for any office, agency or service to be performed out of this state, may take the oath prescribed by this act before a justice, notary, court or judge of the county in which he resides, or in which the duties of the office, agency or service are to be performed.

By whom oath administered.

4. If any person elected, except as a member of the legislature, or appointed to any official public trust, civil or military, exercise any authority, or enter upon the discharge of any duty pertaining thereto before taking the proper oath, he shall forfeit not less than fifty dollars nor more than one thousand dollars.

Penalty for discharging duties of office before taking oath.

5. The oath to be taken as aforesaid shall be certified by the person who administers the same, as by the order of the court if taken in court, and the certificates or copies of the orders of the court disposed of as follows: Those showing the oaths taken by the governor, treasurer, auditor, attorney general, the state superintendent of free schools, secretary of state and clerks employed by them, and of all other civil officers except those afterwards mentioned in this section, shall be filed in the office of the secretary of state. The certificates of the oaths of officers

How oath certified.

Certificates of having taken oath: where filed.

Of governor and other state officers.

Officers of legisla-
ture.

Judges.

Clerk of county or
circuit court, sher-
iff, assessor, &c.

of the senate and house of delegates shall be filed in the office of the secretary of state. The certificates of the oaths of judges of the supreme court of appeals or judges of the circuit courts, shall be delivered to and recorded by the clerk of the county court of the county in which such judge may reside, or to the clerk of the court exercising judicial powers, created under authority of the thirty-fourth section of the eighth article of the constitution, as a substitute for a county court of the county in which said judge may reside. The certificate of the oath of a clerk of a county court or of the clerk of any court or other tribunal created as a substitute for a county court, shall be delivered to and recorded by the clerk of the circuit court of the county. The certificate of the oath of a clerk of a circuit court, sheriff, assessor, surveyor of lands, president of a county court, justices, notary public and all other county, district and municipal officers shall be delivered to and recorded by the clerk of the county court or delivered to and recorded by the clerk of the court exercising judicial powers, which may have been or be hereafter substituted for a county court, unless such officer take the oath in open court, before the county court or such substituted court, in which case an order shall be entered in such court with the other orders of the court.

Within what time
oath to be taken.

6. The oaths required by this act shall be taken within the time prescribed by law for officers to give official bonds, whether the person who makes the same is required by law to give bond or not. Persons elected to office on the twenty-second day of August, eighteen hundred and seventy-two, and who have not since the twentieth day of December, eighteen hundred and seventy-two, taken the oath of office shall do so before entering upon or discharging the duties of their office.

As to persons
elected August
22, 1872.

Clerk of county
court to furnish
list of officers who
have qualified to
secretary of state.

7. The clerk of the county court of each county or clerk of the substituted court therefor, shall within

thirty days after the qualification of county officers, chosen at the general elections, transmit to the secretary of state a certified list of all such officers with Also name and office of each. the names and office of each.

8. The ninth chapter of the code is hereby repealed. Chapter of code repealed.

9. This act shall be in force from its passage. Commencement.

CHAPTER CXXI.

AN ACT to amend and re-enact chapter four of the code in relation to vacancies in office, and to repeal the seventh and ninth sections of chapter seven of the code.

Passed April 12, 1873.

Be it enacted by the Legislature of West Virginia :

1. If a vacancy shall occur in the office of a judge of a court of limited jurisdiction, established in any town or city in this state, the same shall be filled until the next regular election by the council of the said town or city. Vacancy in office of judge of court of limited jurisdiction; how filled.

2. All acts or parts of acts inconsistent with this act, and section seven of chapter seven of the code, are hereby repealed. Inconsistent acts an 1 sec. 7 of ch. 7 of code repealed.

3. This act shall take effect and be in force from and after its passage. Commencement.

CHAPTER CXXII.

AN ACT to amend and re-enact chapter eighty-five of the code concerning personal representatives; their powers and duties as to personal estate.

Passed April 12, 1873.

Be it enacted by the Legislature of West Virginia :

That chapter eighty-five of the code be amended and re-enacted so as to read as follows : Chapter amended.

Executor; what he
may do before
qualifying.

"1. A person appointed by a will executor thereof, shall not have the powers of executor until he qualify as such, by taking an oath and giving bond before the circuit or county court in which the will, or an authenticated copy thereof, is admitted to record, except that he may provide for the burial of the testator, pay reasonable funeral expenses and preserve the estate from waste.

When court may
grant administration
with will
annexed.

"2. If there be no executor appointed by the will, or if all the executors therein named refuse the executorship, or fail, when required, to give such bond, which shall amount to such refusal, the said court may grant administration, with the will annexed, to the person who would have been entitled to administration if there had been no will, he taking such oath and giving such bond.

Oath of executor or
administrator.

"3. The oath of an executor or of an administrator, with the will annexed, shall be, that the writing admitted to record contains the true last will and testament of the deceased, as far as he knows or believes, and that he will faithfully perform the duties of his office to the best of his skill and judgment; and no other oath shall be required of him.

What court has jurisdiction to appoint
administrator of
intestate.

"4. In case of a person dying intestate, the jurisdiction to hear and determine the right of administration of his estate shall be in the court which would have jurisdiction as to the probate of his will, if there was a will. Administration shall be granted to the distributees who apply therefor, preferring first the husband or wife, and then such of the others entitled to distribution as the court shall see fit. If no distributee apply for administration within thirty days from the death of the intestate, the court may grant administration to one or more of his creditors, or to any other person.

To whom and in
what order admin-
istration granted.

Bond and oath of
administrator.

"5. Before any grant of administration, as of the estate of an intestate, the person to whom it is granted shall, before the court granting it, give bond and

take an oath that the deceased has left no will, as far as he knows, and that he will faithfully perform the duties of his office to the best of his skill and judgment; and no other oath shall be required of him.

If a will of the deceased be afterwards admitted to record, or if after administration is granted to a creditor, or other person than a distributee, any distributee who shall not have before refused, shall apply for administration, there may be a grant of probate or administration in like manner as if the former grant had not been made, and the said former grant shall thereupon cease.

When grant of administration may be set aside and new administrator appointed.

"6. Every bond of an executor or administrator shall be in a penalty equal, at least, to the full value of the personal estate of the deceased to be administered; and where there is a will which authorizes the executor or administrator to sell real estate, or receive the rents and profits thereof, the bond shall be in a penalty equal at least to the full value both of the said personal estate and of such real estate.

Penalty of bond of executor or administrator.

"7. Where the will directs that an executor shall not give security, the court shall not require it of him, unless, on the application of any person interested, or for good reasons appearing to the court, it is deemed that security ought to be given.

Bond not to be given where will so directs.

Exception.

"8. The executor of an executor shall have no authority so much to administer the estate of the first testator, but on the death of the sole surviving executor of my last will, administration of the estate of the first testator, not already administered, may be granted when the will annexed, to such person as the court shall think fit to appoint.

Executor of executor to have no authority over estate of first testator.

When administrator with will annexed to be appointed.

"9. Where an unmarried woman who is personal representative, either alone or jointly with another shall marry, her husband shall not be a personal representative in her right, but the marriage shall operate as an extinguishment of her authority; and

Marriage extinguishes authority of a woman as administratrix.

The other personal representatives to act if there be one; if not, court to appoint.

the other personal representative, if there be any, may proceed in discharging the trust as if she were dead; and if there be no other, administration de bonis non (with the will annexed if there be a will) may be granted by the court.

When administration may be committed to sheriff.

“10. If at any time three months elapse without there being an executor or administrator of the estate of the deceased (except during a contest about the decedent's will, or during the infancy or absence of the executor) the court before whom the will was admitted to probate, or having jurisdiction to grant administration; shall on the motion of any person order the sheriff or other officer of the county to take into his possession the estate of such decedent and administer the same; whereupon such sheriff or other officer without taking any other oath of office or giving any other bond or security than he may have before taken or given, shall be the administrator, or administrator de bonis non of the decedent, with his will annexed if there be a will, and shall be thenceforward entitled to all the rights and bound to perform all the duties of such administrator. The court may, however, at any time afterwards revoke such order and allow any other person to qualify as executor or administrator.

No additional bond or oath required.

Rights, powers and duties of sheriff.

Court may revoke order and allow another person to qualify.

Copy of order as effectual as letters made out in due form.

When required, clerk to make out probate in due form.

Appraisers to be appointed.

“11. A copy of the order whereby certificate is granted to any personal representative for obtaining probate or letters of administration shall be as effectual as the probate or letters made out in due form. Nevertheless, the clerk of the court in which such order is made shall, when required by any personal representative, make out such probate in due form.

“12. Every court by whose order any person is authorized to act as a personal representative, shall, unless when a testator directs his estate not to be appraised, appoint three or more appraisers in every county in which there may be any goods or chattels of the deceased, or (in the case of will) in which

there may be any real estate which the personal representative is authorized to sell or of which he is authorized to receive the rents and profits. After taking an oath for the purpose, they shall appraise such goods or chattles as may be produced to them and also the said real estate. The appraisers shall receive each for their attendance one dollar per day; the appraisement shall be signed by them and returned to the clerk of such court and by him be recorded. Every such appraisement shall be prima facie evidence of the value of the estate embraced therein, and that it came to the hands of the personal representative.

To be sworn.

Their duties.

Their fees.

Appraisement prima facie evidence of value of property.

"13. It shall be the duty of every personal representative to administer well and truly the whole personal estate of his decedent. The appointment of a debtor executor shall not extinguish the debt.

Duty of personal representatives as to personal estate.

Appointment of debtor, executor does not extinguish the debt.

"14. The dead victuals (or so much thereof as may be necessary) which at the death of any person, shall have been laid in for consumption in his family, shall remain for the use of such family, if the same be desired by any member of it, without account thereof being made. Any live stock necessary for the food of the family may be killed for that use before the sale or distribution of the estate.

Dead victuals; how disposed of.

Livestock.

"15. Unless it be necessary for the payment of funeral expenses, charges of administration or debts, the personal representative shall not sell estate which the will directs not to be sold.

In what cases property can be sold that will directs not to be sold.

"16. Of the goods not mentioned in the preceding section, other than such as may be selected by the widow or husband of the deceased (as the case may be) residing in this state, or the infant children of such deceased parent, not exceeding two hundred dollars in value, the personal representative shall, as soon as convenient, sell at public auction such as are likely to be impaired in value by keeping, giving a

Exempt property not to be sold.

Sale of goods, &c., likely to be impaired in value.

Terms of sale. reasonable credit (except for small sums) and taking bond with good security.

When further sales to be made. "17. If the goods so sold be not sufficient to pay the funeral expenses, charges of administration, debts and legacies, the personal representative shall sell so much of the other goods and chattels as may be necessary to pay the same, having regard to the privilege of specific legacies to be regarded.

Estate for life of another goes to personal representative. "18. Any estate for the life of another shall go to the personal representative of the party entitled to the estate, and be assets in his hands, and be applied and distributed as the personal estate of such party.

Proceeds of; how distributed, "19. A personal representative may sue or be sued upon any judgment for or against, or any contract of, or with, his decedent.

What actions of trespass, &c., may be maintained by or against personal representative. "20. An action of trespass or trespass on the case may be maintained by or against a personal representative for the taking or carrying away of any goods, or for the waste or destruction of or damage to, any estate of or by his decedent.

Action for waste may be maintained against personal representative in his own wrong, &c. "21. A suit may be maintained against the personal representative of an executor in his own wrong, or the personal representative of a rightful executor or administrator by whom any waste may have been committed.

When administrator de bonis non may have scire facias. "22. Where a suit is pending or a judgment or decree has been rendered in this state, in favor of a personal representative upon a contract made or for a cause of action which accrued in the life time of the decedent, the administrator de bonis non of such decedent may sue forth a scire facias to have execution upon such judgment or decree or to revive and prosecute to judgment or decree the suit so pending, if the personal representative who brought it could have maintained the same.

When suit may be brought on bond of representative. "23. Where an execution on a judgment or decree against a personal representative is returned without

being satisfied, there may be forthwith brought and prosecuted an action against the obligors in any bond given by such personal representative for the faithful discharge of his duties.

“24. No personal representative or any surety of his shall be chargeable beyond the assets of the decedent by reason of any omission or mistake in pleading or false pleading of such representative. Representative or security not liable beyond assets which come into his hands. And in the action allowed by the preceding section the defendants may plead any pleas and offer any evidence which would be admissible in an action against a personal representative suggesting a devastavit. Pleadings in actions against him.

“25. Where the assets of the decedent in the hands of his personal representative, after the payment of funeral expenses and charges of administration, are not sufficient for the satisfaction of all demands against him, they shall be applied, Order in which debts shall be paid.

FIRST. To debts due the United States;

SECONDLY. Taxes and levies assessed upon the decedent previous to his death;

THIRDLY. Debts due as personal representative, guardian or committee, where the qualification was in this state, in which debts shall be included a debt for money received by a husband acting as such fiduciary in right of his wife;

FOURTHLY. All other demands ratably, except those in the next class;

FIFTHLY. Voluntary obligations.

“26. No payment shall be made to creditors of any one class until all those of the preceding class or classes shall be fully paid. But a personal representative who, after twelve months from his qualification, pays a debt of his decedent, shall not thereby be personally liable for any debt or demand against the decedent, of equal or superior dignity, whether No payment shall be made to creditors of one class till those of preceding class are paid. When personal representative not liable for paying debts of inferior dignity.

it be of record or not, unless before such payment he shall have notice of such debt or demand."

Commencement.

27. This act shall be in force from its passage.

CHAPTER CXXIII.

AN ACT to amend and re-enact the school law of the state.

Passed April 12, 1873.

Be it enacted by the Legislature of West Virginia :

1. That for the purpose of free schools the several counties of the state shall be divided into school districts and sub-districts. Until changed, as hereinafter provided, the townships and districts, as now arranged, shall constitute the districts and sub-districts, respectively, of the several counties.

2. Each county shall be under the control of a county superintendent; each district shall be under the control of a board of education; and each sub-district under the control of one trustee. The same person shall not be eligible to more than one of these offices at the same time. The board of education shall consist of a president and two commissioners.

An election for these officers shall be held at the school house of each sub-district, from nine o'clock in the morning till six P. M. of the second Friday of August, 1873, and every two years thereafter. It shall be the duty of the board of education of each district to give at least three weeks' notice of this election by causing the same to be posted at each of the places at which a poll is to be taken, and at such other places as they may think necessary. If there is more than one school-house in a sub-district, said election shall be held at the one most convenient to the voters of such sub-district, to be designated by the board of education having control over the same.

For the purpose of free schools counties divided into districts and sub-districts.

Townships and districts as now arranged to constitute such school districts and sub-districts until otherwise provided.

Each county controlled by county superintendent; each district by board of education and each sub-district by a trustee.

Eligible to only one office at same time.

Board of education.

Election for officers, where and when held.

Notice of election.

If more than one school house in sub-district, where election held.

Poll-books shall be prepared by the county superintendent, and delivered to the trustees of the several school houses at which elections are to be held. At this election the persons qualified to vote for members of the state legislature shall be the electors. A judge and a clerk of such election (neither of whom shall be eligible to any of the offices to be filled by such election) shall be chosen by those present at the place of voting at the time of opening the polls for the same. The person thus chosen as judge shall preside at said election; in case of a tie in the vote for trustee, he shall give the casting vote and deliver a certificate of his election to the person receiving the highest number of votes for this office, signed by himself and clerk. Within ten days after the holding of said election, he shall also forward to the secretary of the board of education of his district, the full official records of the election as held by him for all the officers specified in this section. The board of education for each district shall assemble on the second Monday after said election, and a majority of the same being present, shall open and examine the election records of the several sub-districts. They shall ascertain therefrom who has received the largest number of votes for the several officers of the district board of education, and give certificates of their election to the persons entitled thereto. They shall also ascertain the sum of the votes cast in the several sub-districts, of their district, for the person or persons voted for as county superintendent, and within five days report the same to the clerk of the county court. It shall be the duty of the clerk of the county court to ascertain from these reports the person who has received the largest number of votes for the office of county superintendent, and to give to him a certificate of his election, and report his name, by letter, to the state superintendent of free schools. Should there be a tie in the vote for the members of the board of education, the county superintendent

Poll books.

Who qualified as electors.

Judge and clerk of election; how and when chosen.

Judge to preside at election.

The vote for trustee, how decided.

Certificate of election.

Official records of election; when, by whom and to whom returned.

Examination of such records; when and by whom made.

Certificates of election of officers of district board of education; by whom made.

Sum of the votes cast for county superintendent; by whom ascertained and to whom reported.

Election of county superintendent; by whom ascertained and to whom reported.

The vote for members of board of education; how decided.

Tie vote for county superintendent; how decided.

Ballots for election.

For annual levies; what to contain.

How construed.

Prohibition to make levy not to extend longer than one year.

Special election for levy, when and how held.

Notice as to such election.

Penalty on judge for failure to perform his duty, or for receiving and counting, knowingly, illegal votes, or for issuing certificate to person not entitled thereto &c.

shall give the casting vote; and in case two or more persons shall receive an equal, and the highest number of votes for the office of county superintendent, the presidents of the district boards of education in the county shall, at a meeting called for that purpose by the clerk of the county court, of which there shall be due notice, choose by vote one of such persons for county superintendent. The ballots used at this election shall have written or printed upon them the names of all persons voted for, and the office for which each is preferred. The same ballots shall also have written or printed upon them, "for power to levy," or "against power to levy," as the voter may choose. If a majority of the ballots given in the district shall have written or printed upon them, "for power to levy," it shall be construed as conferring upon the board of education the authority of the people to make the annual levies required in the thirty-eighth and fortieth sections of this chapter, for each year during their term of office; but if a majority of the ballots given in the district shall have written upon them "against power to levy," it shall be construed as withholding from the board the authority of the people to make any levy; and no levy shall be made for the school year next succeeding. But this prohibition shall not extend longer than the one year, and it shall be the duty of the board of education to hold a special election for the following year, on the day and date, and in the manner prescribed in this section, at which the question of levy or no levy shall be again submitted to the people, and decided for that year as herein required. When such election is required to be held, the clerk of the board of education shall give due notice thereof by posting the same at each of the places at which a poll is to be taken in the district.

3. Any person who may be chosen judge of such an election, who shall knowingly receive and count any illegal vote, or issue a certificate of election to any person not entitled thereto, or shall refuse to

issue such certificate to any one duly elected, or who shall fail for ten days after such election, to report the name of the trustee thus elected, or to forward the official records of the election to the proper board of education; or any person who shall with fraudulent intent, mutilate or destroy the records of such election, shall be fined the sum of fifty dollars for every such offence, and be confined for twenty days in the county jail.

On any person for mutilating or destroying records, &c

4. If from failure to qualify, or from any other cause, there be a vacancy in the office of trustee, or in the board of education, said board shall supply the same, by their appointment, and the person so appointed shall hold his office for the unexpired term, and until his successor be elected and qualified; or should there be no board, the county superintendent shall appoint the members thereof for the unexpired term.

Vacancy in office of trustee; how filled for unexpired term.

5. Each trustee, and commissioner of the board of education, elected as provided in section second of this chapter, shall hold his office for the term of two years, commencing on the first day of September next after his election.

Term of office of trustee and commissioner.

6. The boards of education of the several districts shall hold their first meeting for each school year on the first Monday of September. At this meeting they shall determine the number of months the school shall be held in the district, the number of teachers that may be employed in the several sub-districts and fix the salaries that shall be paid to the teachers. In determining the salaries they shall have regard to the grade of teachers' certificates, fixing to each grade the salary that shall be paid to teachers of said grade, in the several sub-districts, and the trustees of the several sub-districts shall in no case transcend the salaries so fixed in any contract they may make with teachers. A quorum of the board of education

First meeting of boards of education.

Duties of board at first meeting.

Salary of teacher to be determined according to grade of certificate.

Trustees not to transcend salary so fixed.

Quorum of board

In the absence of
president, who
may act.

shall consist of a majority of the members thereof; and in the absence of the president, one of said members may act as such; but they shall do no official business except when assembled as a board, and by due notice to all the members.

Board incorporated.

Powers of such
corporation.

7. The board of education shall be a corporation by the name of "the board of education of — district of — county," and as such may receive, hold, use and dispose of, according to the rules of law and the intent of the instrument conferring title, any gift, grant, devise or bequest made for the use of any free school or schools under their jurisdiction; and without any transfer or conveyance shall be deemed the owner of the real and personal property of their district, which has been lawfully appropriated to the use of free schools. Process and notice may be served on the said corporation by delivering a copy thereof to the secretary or any two members of the board.

Process; how
served on corpora-
tion.

Secretary of the board; his duties and compensation.

Secretary of board,
when appointed

His duties.

8. The board of education at their first meeting after their election shall appoint a secretary, who shall attend all meetings of the board and record all their official proceedings in a book kept for the purpose, and cause such record to be attested by his signature and the signature of the president of the board; which record shall at all seasonable times be open to the inspection of any person interested therein; he shall have the care of all papers belonging to the board containing evidence of title, contracts or obligations, or which are otherwise valuable, and preserve the same in his office properly arranged for reference; and shall record and keep on file in his office such papers and documents as the board or law may direct. He shall keep such accounts and prepare and certify such reports and writings pertaining to the business of the board as

the board or law may direct. He shall publish within three days after any meeting of the board of education an abstract of the proceedings thereof by posting the same at the front door of the place of meeting. For his services as secretary he shall receive such compensation as the board may determine, not exceeding twenty-five dollars per year, to be paid out of the building fund, by an order drawn by the county superintendent, when, after an examination of said secretary's books by the said county superintendent, they are found to be correct. But such order shall not be drawn until the said secretary shall have made his annual report to the county superintendent as hereinafter provided.

His compensation;
how determined
and paid.

Secretary to make
annual report be-
fore receiving
salary.

9. The board of education shall have general control and supervision of the schools and school interests of their districts; they may determine the number and location of the schools to be taught; they may change the boundaries of their sub-districts, and increase and diminish the number thereof, having due regard for the school-houses already built, or sites procured, assigning, if practicable, to each district not less than fifty youths between the ages of six and twenty-one years: Provided, That every village consisting of fifty inhabitants or more, shall be included in one sub-district: and provided further, that no change in any sub-district shall take effect except immediately after the annual apportionment of the general school fund. When such village as is mentioned in this section is divided by district or county lines, the said village shall be included in the sub-district to be under the supervision of the board of education of the district to which the largest division of territory is attached.

Board to have gen-
eral control of
schools.

May change bound-
aries of sub-districts
and increase or di-
minish the number
thereof.

Village consisting
of fifty inhabitants
to be included in
one sub-district.

When change of
sub-district to take
effect.

Provision in regard
to village divided
by district or
county lines.

10. The board of education shall cause to be kept in every sub-district of their district, by a teacher or teachers of competent ability and good morals, a sufficient number of primary schools for the instruction of the persons entitled to attend the same, and should

Duty of board to
have schools kept
in every sub-dis-
trict, &c.

If trustee fail to employ teacher. board to do so.

Who may attend such schools.

Tuition fees: in what cases payable.

When and to whom paid, &c.

the trustee of any sub-district neglect or fail to employ a teacher for his sub-district, upon complaint thereof it shall be the duty of the board of education to do so. The following persons, when residing in a sub-district, with intent to make such sub-district their home, shall have a right to attend and receive instruction at the primary schools thereof, that is to say: every youth between the ages of six and twenty-one years, shall have such right; and any person wishing to receive instruction at any free school in this state shall have a right to attend such school, and the teacher or teachers there employed shall give instruction to such person the same as is required by law for other persons, upon the payment of tuition fees, and upon such other terms as the trustee of the sub-district may prescribe. Said tuition fees shall be paid in advance into the district treasury, and placed to the credit of the teacher's fund of said district.

Branches of learning to be taught.

Branches of learning to be taught.

11. In the primary schools there shall be taught orthography, reading, penmanship, arithmetic, English grammar, history, geography, and such other branches as the board of education may direct.

Powers and duties of trustees.

Trustees to be under control, &c., of board of education.

How and when persons in one county, district or sub-district may be transferred, &c.

12. The trustees shall be under the supervision and control of the board of education. Whenever it shall happen that persons are so situated as to be better accommodated at the primary school of an adjoining sub-district, whether in the same or in an adjoining district or county, or whenever it may be necessary to establish a school composed of pupils from parts of two sub-districts, whether in the same or in an adjoining district or county, it shall be the duty of the trustees of the sub-districts interested, to transfer such persons, for school purposes, to the sub-district in which such school-house is or may be situated; but the enumeration of youth shall be taken in each

Enumeration of youth; how taken in such cases.

sub-district as if no transfer had been made, and the trustee of the sub-district in which the school is situated shall have the management of such school; and such schools, when so composed shall be supported from the funds of the district in which they are located: Provided, That no district shall be required to receive without compensation such pupils for a longer time than that for which provision is made in the district from which they are transferred; and the trustee of the sub-district in which the school is situated shall have the management of such school.

How such schools supported.

Proviso.

What trustee to have management of such school.

13. The trustee of every sub-district shall appoint the teachers for the schools under his charge, and dismiss them at any time for incompetency, neglect of duty, intemperance, profanity, cruelty or immorality. Such appointment shall be by contract in writing, according to the form furnished by the state superintendent, which contract shall be filed with the secretary of the board within one week after it is made. The trustee may exclude from such school any person having a contagious or infectious disease. He may expel or suspend any scholar found guilty of disorderly, refractory, indecent or immoral conduct, and refuse to admit him until satisfied that he will thereafter properly conduct himself; but his action in each particular shall be subject to the revision and correction of the board of education.

Trustee of every sub-district to appoint teachers for schools under his charge, and to dismiss them.

Appointment to be by contract.

Where contract filed.

When and for what causes scholars may be suspended or expelled by trustee.

Subject, however, to board of education.

14. The trustee shall visit every school under his charge within two weeks after the opening, and again within two weeks before the close thereof, and at such other times as in his opinion it may be useful to do so. During such visits he shall inspect the register of every teacher, and see whether it has been properly kept; and ascertain whether the scholars have supplied themselves with books and other things requisite for their studies; whether the school house and grounds, furniture, apparatus and library are kept in good order; whether anything injurious to

Trustee must visit school; when.

His duties during such visits.

the health is suffered to remain about the house or grounds, and whether the school house is well ventilated and kept comfortable, as the season may require; and, where it is necessary, provide and promptly apply the proper remedy. He shall also, during such visits, make such examination and inquiry as he may deem useful respecting the studies, discipline and general condition of the school, and the conduct and proficiency of the scholars; and give such directions or make such suggestions to the teachers as in his opinion will promote the interest of the school, and the health, morals and progress of the scholars.

Shall cause school houses, &c., under his charge to be kept in good repair, order, &c.

For this purpose may prosecute proper suits, &c.

Not to permit school houses to be used for any other purpose without permission of board.

Exception.

Estimates of improvements to be furnished to board

Trustee to keep account of expenses, and render same to secretary of board.

15. He shall cause the school-houses under his charge, and everything pertaining thereto, to be kept in good order and repair, and for this purpose it shall, among other things, be his duty to cause proper suits and prosecutions to be instituted, in the name of the board of education of the district, or otherwise, against every person who shall injure or destroy any school property of which the said trustee has charge, and he shall not, without the permission of the district board of education, allow said school houses to be used for any other purpose whatever, except that he may allow said houses to be used for the purpose of holding religious meetings and Sunday schools, equally by the various religious denominations that may apply for the same, under such regulations as to the care of the same as he may prescribe. The trustee shall furnish to the board of education estimates of all improvements necessary to the preservation or repairs of buildings, grounds and furniture under his charge.

16. The trustee of each sub-district shall keep exact accounts of all necessary expenses incurred by him in the performance of his duties, and render to the secretary of the board of education at or before their last meeting for the current school year, written accounts, by items, of all such expenses; which, if the

board find them correct, they shall pay by an order to the sheriff, drawn on the building fund of the district, signed by their secretary and president. The trustee of any sub-district may purchase fuel, water-buckets, brooms, coal-hods, shovels, pokers, stove pipes, and dippers for use in school room. He may make such repairs in windows, doors, benches, desks, floors, walls, ceilings and roofs as may render the house comfortable. For such purchase or repairs he shall render to the secretary of the board of education an account, which, if the board find correct, they shall pay out of the building fund of the district.

If correct, how paid.

What trustee may purchase.

What repairs he may make.

Account for such purchases or repairs; to whom rendered and how paid.

17. White and colored persons shall not be taught in the same school, but to afford to colored children, as far as practicable, the benefit of a free school education, it shall be the duty of the trustee of every sub-school district to establish therein one or more primary schools for colored persons, between the ages of six and twenty-one years, whenever the number of such persons residing therein, and between the ages aforesaid, exceeds twenty-five, according to the enumeration made for school purposes. The trustees of two or more sub-districts, whether in the same or adjoining districts or counties, may, by agreement with each other, join in establishing a primary school for colored children residing in said sub-districts, and such schools so established shall be subject to the same regulations that are provided for the schools for white children in section twelve of this chapter.

White and colored persons not to be taught in same schools.

Colored schools when and how established.

How such schools established by trustees of two or more sub-districts.

Regulations governing such schools

18. Whenever in any school district the benefit of a free school education is not secured to the colored children residing therein, in the manner mentioned in the preceding section, the fund applicable to the support of free schools in such sub-district, whether received from the state or local taxation, shall be divided in the proportion which the number of colored children bears to the number of white children therein, according to the latest enumeration made for school purposes;

When and in what cases the proportion of school funds for colored children to be set apart, &c.

and the share of the former shall be set apart for the education of colored persons of the proper age, residing in such sub-district or district, and be applied for that purpose from time to time, in such way as the board of education of the district may deem best.

Annual enumeration of youth; when and by whom made.

19. The board of education of each district shall annually, as soon as practicable after the first day of June, cause an enumeration to be taken of all youth resident in the several sub-districts of their district who are between the ages of six and twenty-one years, distinguishing between male and female, white and colored; not including persons who are temporarily in such sub-district without the intention to make it their home. The enumeration, verified by the affidavit of the person who took the same, before some person qualified to administer oaths, to the effect that he used all the means in his power to make it correct, and believes it to be so, shall, on or before the first day of July, be returned to the board of education, and by the secretary recorded in his office and transmitted to the county superintendent of free schools. When such enumeration for any district or sub-district shall not be received by the county superintendent before the first day of July in any year, it shall be his duty, without delay, to employ a competent person to take and verify the same as aforesaid. In either event the person taking and verifying such enumeration shall be paid a reasonable compensation, to be allowed by the board of education, not to exceed two dollars per day for the time necessarily consumed, and paid by an order of said board, signed by the president and secretary, out of the building fund of such district. In either case the county superintendent, as soon as he receives the enumeration for any district or independent school district, shall forward to the state superintendent of free schools a statement of the number of scholars therein.

Enumeration; how verified.

When and to whom returned.

If enumeration not received by county superintendent by July 1, he must employ some one to make it.

Compensation.

How paid.

County superintendent to forward enumeration to state superintendent.

Of the reports to be made.

20. The trustee of each sub-district shall make a report to the secretary of the board of education of his district at or before their last meeting in each school year, setting forth, in reference to his sub-district, the following particulars, that is to say: the condition of school houses under his charge; value and kind of apparatus; number of volumes in school libraries, and their value; with such explanations, remarks and additional information as the said trustee may deem useful, or as the blanks furnished by the state superintendent of free schools may require. He shall also report the same particulars in relation to any schools under his charge for colored persons.

Trustee's report:
when made and
what to contain

21. The secretary of the board of education to whom the report of the trustees shall have been made as provided in the twentieth section, shall revise the said reports, and if they be found erroneous or defective, may return them for correction. From the corrected report and the teachers' registers provided for in the thirtieth section of this chapter, and such other authentic information as he may be able to obtain, he shall make a report to the county superintendent on or before the twentieth day of September, annually, in tabular form, by sub-districts, embracing each particular reported to him by the said trustees' reports and teachers' registers, and showing the aggregate or average of each, as the case may require, for his district. And he shall further report to the county superintendent on or before the twentieth day of September, annually, the following additional particulars in reference to his district, for the year ending on the preceding thirty-first day of August, that is to say: the rate and amount of the tax levied for the teachers' fund and the building fund, respectively; the amount of such taxes collected and placed to the credit of each of these funds; the amount received from the state for the teachers' fund; the amount of

Secretary of board
of education; his
duty as to reports
of trustees.

His report to county
superintendent,
and what to contain.

Additional particulars
to be reported.

the balance in the treasury at the beginning of the school year for each fund; the amount of receipts from all other sources and placed to the credit of each fund; the amount expended for the pay of teachers, male and female, white and colored, respectively; the amount of commissions paid to the sheriff or collector; the amount of the delinquent list returned by said collector; the amount of the balance in hand at the close of the school year for each fund; the amount expended for the purchase of sites for school houses, for the construction and furnishing of the same; for the rent, hire and repair of such property; the amount expended for furniture, for apparatus, for interest, for the enumeration of youth and for contingencies; also, the number of volumes in school libraries and their value; total receipts; total expenditures, with such explanations, remarks and additional information as he may deem proper, or as the blanks furnished by the state superintendent may require. He shall also in like manner report all particulars pertaining to any colored school or schools in his district. For this report the secretary shall be allowed out of the building fund, in addition to his salary as secretary, the compensation of ten dollars; but the board of education shall in no case order this sum to be paid until the county superintendent has certified to them that the said report has been made, and that it is correct and complete, and made within the the time specified in this section.

His compensation.
When paid,

County superintendent; his duty as to
such reports.

22. The county superintendent shall receive and revise the reports made to him as aforesaid, and see that they are in proper form and according to intent of law; and when deficiencies or errors are found to exist, shall return them for correction. From these reports, and other authentic information he can obtain, he shall make a report to the state superintendent of free schools, on or before the thirtieth day of September, annually, or as soon thereafter as possible,

His report to state
superintendent;
when made and
what to contain.

setting forth in reference to each district of his county, and for the year ending on the preceding thirty-first day of August, the several particulars mentioned in the twentieth and twenty-first sections, with the proper aggregate or averages of each for the county; and shall make the apportionment, and report such apportionment to the auditor, and also report whether the districts have made their levy.

His report of apportionment to auditor.

School year.

23. The school year shall commence on the first day of September, and close on the thirty-first day of August, inclusively, and all reports, accounts and settlements respecting the free schools of this state shall be made with reference to the school year.

School year: commencement and closing of.

Reports, settlements, &c., to be made with reference to school year.

High school.

24. When the board of education of any district deem it expedient to establish a high school, they shall submit the question to the voters of the district on the day and month of election named in section two of this chapter of any year, in the manner following, that is to say: the board shall prepare and sign a notice setting forth the kind of school proposed; the place where it is to be located; the estimated expense of establishing the same, including cost of site, building, furniture, books and apparatus; and the estimated annual expense of supporting the school after it is in operation, with such other information concerning it as they may deem proper; and stating that the question of authorizing the establishment of such school will be submitted to the voters of the district, at the election specified in the notice, which they shall cause to be posted four weeks before the election in at least three of the most public places in the district. A poll shall thereupon be taken upon the said question at the election specified in the notice, and the result ascertained in like manner as is prescribed in section two of this chapter. The ballots

High schools: when and how established.

Notice of intention to establish; what to contain.

When and where posted.

Poll: when taken and result ascertained.

Ballots and contents thereof.

Three-fifths of vote cast necessary to establish such school.

Duties of board of education if school established.

Annual levy in such cases.

Control of school.

Graded schools: when, where and how established.

If such schools involve additional taxation, the matter to be submitted to a vote.

Levy for graded school.

High schools for two or more districts jointly: how established.

No. fee in such cases

used in voting on the question shall have written or printed thereon the words "for the high school," or "against the high school." If it appear by the result of said poll that not less than three-fifths of the voters who voted on the question are in favor of authorizing the establishment of the said school, the board of education may then proceed to obtain the site, erect proper buildings, fixtures and improvements, and procure necessary furniture, books and apparatus for the said school, and to support the same after it is put in operation; for which purpose the board may annually levy a tax on the property taxable in their district, not to exceed in any one year thirty cents on every one hundred dollars valuation thereof, according to the latest assessment for state and county taxation. The said school shall be under the care and direction of the board of education of the district in which it is established.

25. The board of education shall have power to establish graded schools in towns, villages and densely populated neighborhoods of their respective districts, employ teachers therefor, and to make such special regulations as may be necessary to conduct them. But in every such case involving additional taxation the matter shall be first submitted to a vote of the people, and their consent obtained as is prescribed in section twenty-four in case of a high school: Provided, that no levy for a graded school shall exceed in any one year fifteen cents on every one hundred dollars of valuation.

26. In like manner, if the boards of education of two or more districts, whether in the same or different counties, deem it expedient to jointly establish and support a high school, they may submit the question of authorizing the same to the voters of their districts, separately, and in the manner prescribed in section twenty-four of this chapter, specifying in the notice the amount or proportion of the

expense which each district is to contribute; and if authorized by not less than three-fifths of the voters voting on the question in each district, may proceed jointly to establish and support the said school; and for that purpose the said boards may annually levy a tax on the property taxable in their respective districts, not to exceed in any one year the rate of thirty cents on every hundred dollars valuation thereof. The said school shall be under the care and direction of directors, to be selected and removed from time to time in such manner as the boards of education concerned may agree upon, or when there is no such agreement, under the care and direction of the board of education of the district in which the school house is situated; and the boards of education concerned shall from time to time prescribe such regulations as they may deem necessary respecting the school.

Three-fifths vote
necessary to estab-
lish such school.

Annual levy.

Directors for such
schools; how ap-
pointed and re-
moved.

If none appointed
how school cared
for, &c.

27. The board of directors who have the care and direction of the said school, shall appoint and may remove the teachers; shall fix their salaries; prescribe the branches of learning to be taught; the time the school shall be kept open; the ages and qualifications of the scholars to be admitted; admit scholars from non-contributing districts on such terms of tuition as they may deem proper; expel or suspend scholars when necessary; ascertain and certify the expenses of the school, of which they shall cause exact accounts to be kept; and prescribe all needful regulations respecting the school, subject, nevertheless, to any regulations respecting the same that may be prescribed pursuant to the preceding section. They shall annually report, through their secretary, on or before the twentieth day of September, to the superintendent of free schools for the county in which the school house is situated, such other particulars respecting the school as the state superintendent of free schools may require; and the county superintendent shall transmit the report, with such remarks

Board of directors
of such schools;
their powers and
duties.

Annual report to
county superinten-
dent.

Duty of county su-
perintendent on
receiving same.

and additional information as he deems proper, to the state superintendent.

County boards of examiners.

Board of examiners
for examining and
certifying teachers.

Of whom composed.

When and how
appointed.

Compensation of
board.

How paid.

There shall be in every county, for the purpose of examining and certifying teachers, a county board of examiners, to be composed of the county superintendent, who shall be ex-officio president, and two experienced teachers to be appointed by the presidents of the district boards of education, to be held at a meeting for that purpose, at the county seat on the day of the county court next preceding the thirty-first day of August of every year, at which meeting a majority of said presidents or any three thereof shall constitute a quorum. The board of examiners shall each receive a compensation of three dollars per day for each day actually and necessarily spent in conducting the examinations, and for one day at each of the two stated examinations required in section twenty-eight of this chapter, to be spent in consultation and preparation for their duties. This compensation shall be paid out of the fees received from the teachers examined, and shall in no case exceed the amount thereof.

County superintendent.

Fee for examining
teachers; by whom
collected.

To pay per diem of
examiners.

How surplus, if
any, disposed of.

County superintendent to make out
and deliver to clerk
county court and
state superintendent
certified account
of names of
all applicants for
examination;
amount of fees
received, and

It shall be the duty of the county superintendent to collect from every person who applies for examination a fee therefor of one dollar, out of which he shall pay the per diem of the board of examiners, and the balance, if any, he shall pay to the sheriff, to be placed to the credit of the distributable fund of the county received from the state, and distributed with it, for the school year next preceding. He shall, at the end of each school year, make and deliver to the clerk of the county court, and also to the state superintendent, a detailed and certified account of the names of all applicants for examination; the amount of the fees received by him for the same; the amount

paid out to the members of the board of examiners, and the balance, if any, placed to the credit of the distributable fund of the county as aforesaid.

28. No teacher shall be employed to teach in any public school of this state until he shall have presented to the trustee, directors, or board having charge of such school, a certificate in duplicate of his qualifications to teach a school of the grade for which he applies; the duplicate of which shall be filed with the secretary of any board of education in the county in which the school is situated, and so endorsed on the original by the secretary; and no salary shall be paid to any teacher unless such duplicate be filed as aforesaid. The board of examiners shall examine each candidate for the profession of teacher who may apply to them, as to his or her competency to teach orthography, reading, penmanship, arithmetic, English grammar, geography and history, if the application be for a primary school; and if the application be for a higher school, they shall examine the applicant as to his competency to teach the additional branches required for such school; and if satisfied of the competency of the applicant to teach and govern such school, and that he or she is of good moral character, they shall give a certificate in duplicate accordingly. The county superintendent shall keep a register of all certificates awarded by the board of examiners, stating the character and grade of certificate and the time when issued. No certificate issued by the board of examiners shall be of force except in the county in which it was issued, nor for a longer period than one year; and the board of examiners may, upon proper evidence of the fact, revoke the certificate of any teacher within the county, for any cause which would have justified the withholding thereof when the same was granted, by giving ten days' notice to the teacher of their intention to do so. The board of examiners shall, at two stated periods in each year, agreed upon by themselves, of which

Teacher not to be employed without certificate, in duplicate, of qualification, &c.

Duplicate, where filed.

No salary to be paid unless duplicate filed.

Examination of applicants by board to teach primary schools.

For higher schools.

When and what certificates to be granted.

All certificates granted to be registered.

Certificate to have no force out of county, or for more than one year.

Certificate may be revoked; when and how.

Public examination
of applicants to
teach.

Members of board
of examiners may
teach without
certificate.

Regulations to be
observed by board
of examiners.

Applicant to be of
good moral char-
acter.

No college diploma,
&c., shall supersede
the necessity of
examination.

After what exami-
nation certificate
to be granted.

Teachers to be
graded in each
branch as to pro-
ficiency.

Certificates to be
graded from 1 to 5.
Effect of each
number.

Number 5 certifi-
cate to be granted
but once.

Number 4 but twice

they shall give due notice, hold public examinations, at which all applicants for certificates shall be required to attend; and should circumstances require it, the county superintendent may call extra meetings for the same purpose; county superintendents and members of the board of examiners may be employed as teachers without the certificates required of other teachers.

29. The following regulations shall be observed by boards of examiners in regard to examinations and granting of teachers' certificates: First. No applicant shall be admitted to an examination unless the board shall have reasonable evidence that he or she is of good moral character and temperate habits. Second. No college diploma or certificate, or recommendation from the president or faculty of any college or academy, shall be taken to supersede the necessity of examination by the board of examiners, nor shall a certificate be granted to any applicant except after a careful examination upon each branch of study and upon the art of teaching. Third. Boards of examiners and others herein authorized to confer certificates shall state the teacher's grade of proficiency in each branch in which he is examined. Fourth. They shall grade the certificates granted according to the following scheme, numbering them according to the merit of the applicant, from one to five; number three shall be assumed as the medium between a very good and an indifferent teacher, so that the scheme will stand thus: Number one, a very good teacher, one accomplished in every respect; number two, a good teacher; number three, medium; number four, below medium; and number five indifferent. A number five certificate shall never be granted to a teacher more than once. If, upon a second examination, the applicant is not found entitled to a higher grade, no certificate shall be granted in the county nor in any other county of the state. A number four certificate shall not be granted more

than twice in succession to the same applicant in the same or in any other county of the state. If at the third examination the applicant is not found entitled to a higher grade no certificate shall be granted.

Institute certificates.

Institute certificates shall be granted by the professors who have conducted the institute, as provided in the thirtieth section of this chapter, at the close of its session, but only to the pupils of the institute. They shall be in writing and signed by the professors granting them, and they shall be valid for one, two or three years, as may be designated in the certificate, and in any part of the senatorial district in which they are granted: Provided, that the board of examiners of any county in which the teachers holding these certificates may offer or engage to teach, may revoke within the limits of their own county the right conferred by such certificates for known neglect of duty, immorality, intemperance, profanity or cruelty. No fees shall be charged for these certificates.

Institute certificates; when, how and to whom granted.

Validity of such certificates.

When and how revoked.

Normal school certificates.

Diplomas granted to students of the normal school departments of the several normal schools of this state, as provided in the eighty-eighth section of this chapter, shall be accepted as a certificate of qualification to teach common schools throughout the state. But should such diploma be at any time annulled by the state superintendent, it shall no longer confer the right to teach.

Normal diplomas accepted as to qualification to teach.

May be annulled by state superintendent.

Professional certificates.

Professional certificates shall be granted by a state board of examiners, composed of three members, one of whom shall be the state superintendent of free schools, and the other two, professional teachers to be appointed by the governor. They shall examine any one applying therefor, and if upon such examina-

State board of examiners; professional certificates to be granted by.

How board formed.

Examination.**Requisites of such certificate and its effect.****Revocation of by state superintendent, and for what cause.****Fee for certificate.****How disposed of.****Teacher's register, what to be entered therein.****Forms of; by whom prescribed.****Where register filed at close of term.****For failure to keep and file register, teacher forfeits salary.****When and how teachers paid:**

tion he be found fully qualified, they shall grant him a professional certificate in proper form, engraved upon parchment, authenticated by the seal of the office of state superintendent, and attested by his signature thereto, by which certificate the said teacher shall be legally admitted to the profession of teacher throughout the state of West Virginia during his life: Provided, That the state superintendent shall revoke such professional certificate for immorality, intemperance, or other good cause, when clearly proved; and the board of examiners of any county, shall for like cause, revoke the right conferred by such certificate, within the limits of their respective counties. For every professional certificate a fee of five dollars shall be paid into the distributable school fund.

30. Every teacher shall keep a register, in which shall be entered the date of the commencement and termination of every term of the school; the name and age of every scholar who attended the school during such term; the daily attendance, distinguishing between males and females; the branches taught, and the number of scholars engaged on the last day of each month in the study of each branch; and such other particulars as are necessary to enable the secretaries of the board of education, or directors to make the reports required of them. The state superintendent of free schools shall prescribe such forms and regulations respecting the registers to be kept by the teachers as shall seem to him necessary. At the close of each term, the register thereof shall be returned by the teacher to the office of the secretary of the board of education for the district, who shall file the same; and unless such register be properly kept and returned, the teacher shall not be entitled to demand payment of the balance due on his salary. Teachers shall be paid monthly, and by orders on the sheriff, signed by the secretary and president of

*Amended 1892 -
77-103.*

the board. When any teacher has taught, according to his contract for one month, the trustee for the sub-district in which he has so taught, shall certify the fact to the secretary of the district board, whereupon he shall receive from said secretary an order upon the sheriff of the county, signed by the said secretary and the president of the board of education, for one month's salary: Provided, That such order shall in no case be given, unless the register required in section thirty of this chapter, be first duly made out and returned to the secretary.

Teacher entitled to pay where he has taught one month according to contract.

Provided register has been kept and returned.

31. In contracts with teachers, it shall be understood that the school is not to be kept in operation for ordinary instruction on the first day of January, fourth day of July, or the twenty-fifth day of December, nor on any national or state festival, thanksgiving or fast day; but the month or time mentioned in such contract shall nevertheless be computed as if the said days were included. The school month shall consist of twenty-two days, excluding Saturdays.

Holidays.

Days school not to be kept.

Such time, however, to be computed.

School month to consist of twenty-two days.

General duties of teachers and school officers.

32. All teachers, boards of education and other school officers, are hereby charged with the duty of providing that moral training for the youth of this state which will contribute to securing good behavior and manners, and furnishing the state with exemplary citizens. It shall also be the duty of every school trustee to see that the school house is kept clean and in good order, and that fires, when necessary, are made and kept therein, but no expense shall be incurred therefor, to exceed fifty cents per week.

Duties of teachers, boards of education, &c., in providing moral training, &c.

Trustee to have school house kept clean and fires made, &c.

Expense not to exceed fifty cents per week.

School house furniture, etc.; exemption from levy; enforcement of claim.

33. The president of the board of education of every district shall at least once a year examine the school houses and school house sites in his district,

Duty of president of boards of education as to examining school houses.

Male of such as are not suitable.

Proceeds; how disposed of.

When and how grantor, &c., may have school house site re-conveyed.

Purchaser of buildings to have privilege of removing same.

Not to apply to school house lot in village or town.

Duties of boards of education as to providing suitable school houses.

If board cannot agree as to location, county superintendent to decide.

Powers of boards of adjoining districts or counties as to erecting school houses jointly.

and report the condition of the same to the board; and such as are, in their judgment, properly located, and are sufficient, or can with reasonable expense be rendered so, shall be retained for the use of public schools, and the remainder, with the consent of the county superintendent, shall be sold at public sale, or otherwise, by the board of education, and on such terms of sale as the board may order, and the proceeds added to the building fund: Provided, that the grantor, or his heirs, of any such school house site, shall, if he or they so desire, have the same re-conveyed to him or them without the buildings thereon, (if any,) upon paying to the board of education the amount received by such grantor for such site; or in case no compensation was paid therefor, the same shall be so re-conveyed free of charge. In case of such re-conveyance the building on such site (if any) shall be sold as hereinbefore provided, with privilege to the purchaser to remove them from off such site in a reasonable time. This proviso shall not be construed to apply to any school house lot within any village, town or city.

34. The board of education of every district shall provide by purchase, condemnation, leasing, building or otherwise, suitable school houses and grounds in their district in such locations as will best accommodate the inhabitants thereof, and improve such grounds and provide such furniture, fixtures and appendages for the said school houses as the comfort, health, cleanliness and convenience of the scholars may require; and keep such grounds, school houses, furniture, fixtures and appendages in good order and repair: Provided, that in case such boards of education shall be unable to agree upon a proper location for a school house in any sub-district, such location shall be decided by the county superintendent. Boards of education in adjoining districts or counties may jointly provide for the erection of school houses

for the accommodation of adjoining portions of districts or counties for high schools, union schools or sub-district schools, which, from local causes, cannot be conveniently attached to sub-districts in the districts or counties to which they belong. The title to such houses shall be vested in the board of education having supervision of the sub-district containing the greatest number of children, and terms indicating a trust for the purpose aforesaid shall be introduced into an agreement made between the boards of education interested. Such school houses shall be provided with furniture, fixtures, and such other appendages as are supplied to school houses generally. An equitable amount shall be assessed on each district interested by the respective boards of education for the purpose aforesaid. Boards of education shall in every case require bond of all contractors with approved security in double the amount of the contract, for building or repairing school houses. No board of education, or any member thereof, or trustee of any sub-district, shall become personally interested in any contract for building or repairing school houses in his or their district, under a penalty of one hundred dollars, to be recovered by the action of any person before any justice of the county in which such contract is made, upon proof of such contract, and any member of such board violating this section shall be guilty of a misdemeanor and fined not less than twenty dollars.

Title to such houses,
where vested.

How supplied with
furniture, &c.

Bond required of
contractors.

No board or mem-
ber to be interested
in any contract for
building, &c.,

Penalty for viola-
tion.

35. No school house shall be erected unless the plan thereof shall have been submitted to the county superintendent and approved by him; and it is hereby made his duty to acquaint himself with the principles of school house architecture, and in all his plans for such structures to have regard to economy, convenience, health and durability of structure.

Plan for building
school house to be
approved by county
superintendent.

Is to acquaint him-
self with principles
of school house
architecture.

36. When land has been designated by the board of education of any district as a suitable location for a

Condemnation of
land for school
house sites.

Proceedings.

Notice.

Petition for condemnation.

Viewers.

Their return, and order of court thereon.

When board to enter upon land condemned.

Decree, &c., to be recorded.

Not more than one acre to be condemned.

Exemption from execution, &c., all school property.

Payment of order on sheriff, &c., how enforced.

school house and the necessary buildings, or for enlarging a school house lot, if the owner or owners refuse to sell the same, or demand a price therefor which is deemed by the board unreasonable, or the owner is a femme covert, a minor, non compos mentis, or non-resident, after ten day's notice, served upon such owner or owners, or the owner or owners being non-residents thereof, by publication for four weeks in some newspaper published in the county, or if there be no newspaper published in the county, by posting the same for four weeks at the front door of the court house, and five other public places in the county, at least two of which shall be in the district and one in the sub-district in which such property is located, the board may petition the circuit or county court of their county to have such lot of ground condemned for the use of public schools, and the court shall thereupon appoint a jury of viewers, to consist of twelve free-holders, persons not resident in the district within which such land is located, who being duly sworn faithfully and impartially to try all matters submitted to them, shall assess the value of such land; and upon due return being made of such assessment, and the amount thereof being paid or tendered to the owner or owners, of the land in question, or disposed of as the court may direct, the said board may enter thereon, and use such land for school house purposes, and the decree of the court approving or modifying the report of the viewers, shall be recorded by the board of education in the deed books of the county, in the clerk's office: Provided, That no land shall be taken which shall exceed in quantity one acre.

37. All school houses, school house sites, and other property belonging to any board of education, and used for school purposes, shall be exempt from execution or other process, and from lien on or other distress for taxes or county levies; but when any order of the board, upon the sheriff of the county, or

judgment or decree for a sum of money against the said board has been presented to such sheriff without obtaining payment, payment thereof may be enforced by the circuit court by mandamus or an order for a specific levy on the property taxable in the district.

Building fund; annual levy for the same.

38. To provide school houses and grounds, furniture, fixtures and appendages, and keep the same in good order and repair, and to supply said school houses with fuel and all other things necessary for their comfort and convenience; and to pay the principal and interest of any loans made pursuant to this section, and all other expenses incurred in the district in connection with schools not chargeable to the "teacher's fund," the board of education shall annually levy a tax on the property taxable in each district, not to exceed, in any one year, the rate of forty cents on every hundred dollars valuation thereof, according to the latest assessment of the same for state and county taxation.

Fund for building school houses, &c., to be provided for by board of education.

Annual levy thereof.

39. The proceeds of taxes so levied, of school houses and sites sold, of all donations, devises and bequests, applicable to any of the purposes mentioned in the preceding section, and of any loans that may be made for such purposes, shall constitute a special fund to be called the "building fund," to be appropriated exclusively to the purposes named in the preceding section. And the board of education of any district may borrow money for such purposes on the credit of the "building fund," but such loans shall at no time amount in the aggregate to more than can be paid by a levy at the rate of twenty cents per hundred dollars per year for three successive years, on the assessed valuation of the taxable property of the district.

Building fund; what constitutes.

To what purposes appropriated.

Board may borrow money on credit of fund.

Limitation of power.

Annual levy for support of primary schools.

40. For the support of the primary free schools of their district, and in each independent school dis-

Annual levy; when and how made, and amount thereof.

Rate of taxation.

Teachers' fund;
proceeds of levy
to constitute.

To be appropriated
only to pay salary
of teachers.

Board may be com-
pelled to make levy
by mandamus;
when.

district, the board of education thereof shall annually levy, by the authority of the people, as prescribed in section two of this chapter, such a tax on the property taxable in the district as will, with the money received from the state for the support of free schools be sufficient to keep such schools in operation for at least four months in the year: Provided, the said tax in any year shall not exceed the rate of fifty cents on every hundred dollars valuation, according to the latest available assessment made for state and county taxation. The proceeds of this levy, together with the money received from the state as aforesaid, shall constitute a special fund to be called the teachers' fund, and no part thereof shall be used for any other purpose than the payment of teachers' salaries. Upon the failure of any board of education to lay such levy as hereby required, or any other levy provided for in this chapter, they shall be compelled to do so by the county court of the county by writ of mandamus, unless good cause be shown to the contrary.

How schools may
be continued longer
than four months
in district.

Length of time to
be stated in order.

Ballots; what to
contain.

Majority of all the
votes cast necessary
to authorize levy.

41. If the board of education of any district agree that the schools in their district should be continued more than four months in the year, or if twenty or more voters of the district ask it in writing, they shall submit the question to the voters thereof at a time specified in the order thereof, which order shall state also the length of time for which it is proposed to continue the schools. Ballots may be used for voting on the question on which may be written or printed, "for — months' school," for those who are in favor of more than four months' school; those who oppose a longer term than four months may vote with a ballot having written or printed on it, "against more than four months' school." And if the proposition for a longer term than four months have a majority of all the votes cast for and against, then the board may order the levy accordingly: Provided, that in

any district where a poll is held for the purpose herein specified, notices of such election shall be posted by the clerk of the board of education in at least three public places in the district three weeks before the day of voting; and the notices shall explicitly state the term of time for the school which is to be voted for, and only one term of time shall be voted for at any one election. The poll shall be held and the election conducted, and the official records returned as is prescribed in the second section of this chapter.

Notice of electi...n.

What to contain.

Only one term of time to be voted for.

Where poll held, and how election conducted and returns made.

42. No district, or independent school district, shall hereafter receive any share of the distributable state fund for free schools, in any year in which the levy required by the fortieth section has not been made in such district or independent school district; and any money heretofore or hereafter distributed, and undrawn and remaining credited on the books of the auditor to any such district, or independent school district, on the thirty-first day of August, in each year, shall, on that day, be transferred on the books of the auditor to, and form part of, the general school fund to be next distributed.

State funds not to be drawn until levy made.

Any money distributed and undrawn and remaining credited on August 31, in each year shall form part of general school fund to be next distributed.

43. The assessor of every assessment district, shall make out and deliver to the secretary of the board of education of each district and independent school district, in his district, on or before the first day of September, in each year, a certificate showing the aggregate value of all personal property and real estate, respectively, in such district or independent school district, which certificate shall serve as a basis for any levy that may be made for school purposes for that year.

Assessor to deliver to secretary of board of education a certificate showing value of all property in district on or before Sept. 1.

Effect of such certificate.

44. Immediately upon the receipt of the certificate mentioned in the preceding section, and of the notice from the county superintendent as hereinafter provided, showing the amount of the general school fund to which such district or independent school district

Rates of taxation for pay of teachers and for the building fund determined by board of education: when.

Secretary of board to report the same to clerk of county court, county superintendent and to assessor.

Duty of assessor after receiving such report.

How taxes levied extended on assessors' books.

Sheriff to collect and account therefor.

Penalty on assessor and secretary of board for failure to discharge certain duties.

How disposed of.

Overcharges by assessor.

If inadvertent, to be fined double the amount: If wilful, ten times the amount.

How such fines disposed of; and

How recovered.

Limitation of the powers of boards of education to contract for, or expend school moneys, in any one year.

is entitled, it shall be the duty of the board of education of such district to determine the rates of taxation necessary for the pay of teachers and for the building fund in their district for the school year, and report the same by their secretary, to the clerk of the county court, to the county superintendent, and also to the assessor. And thereupon it shall be the duty of the said assessor to extend on his books of the assessment for state and county purposes, the amount of taxes levied as aforesaid, in two separate columns, the one headed "teacher's fund," and the other, "building fund," from which extension the sheriff shall proceed to collect the same, and shall account therefor as required by law.

45. Any assessor who shall fail to make out and deliver the certificate mentioned in the forty-third section, and any secretary of a board of education, who shall fail to make out and deliver the certificate named in the forty-fourth section, shall be fined twenty dollars, for the benefit of the building fund of the district. And any assessor who shall charge on the assessor's books, as provided in the preceding section, a greater amount of taxes than is due from the person charged therewith, shall, in such case, if the overcharge be inadvertently made, be fined double the amount, and if wilfully made, ten times the amount of the overcharge; one-half thereof to be applied to the benefit of the building fund and the residue to the informer. The fines provided for in this section may be recorded on motion of any citizen of the district or sub-district, in which such delinquency of the assessor or secretary shall occur, or in which the property overcharged may be; and said motion may be, on ten day's notice, made before any justice of such district.

It shall not be lawful for the board of education of any district or independent school district, to contract for, or expend, in any year, more than the aggregate

amount of its quota of the general school fund, and the amount collected from the district or independent school district levies of that year, together with any balance remaining in the hands of the sheriff or collector at the end of the preceding year, and such arrearages of taxes as may be due such district or independent school district. Nor shall such board incur any debt to be paid out of the school money of any subsequent year, for any other purposes, or in any other manner than is provided for in section thirty-nine of this chapter.

As to incurring any debt.

If any trustee or board of education shall make any agreement for the employment of a teacher, or for any other object concerning free schools under their charge, so as to occasion thereby the aggregate of the just claims against the board of education of the district or independent school district, in any year to exceed its aggregate receipts as aforesaid, for such year, such board of education or trustee shall be individually responsible to the teacher or other person with whom such agreement is made.

When trustee or board of education individually responsible for contracts made by them.

*Amended & added
7/1/1903.*

46. The sheriff or collector of the county shall collect and disburse all school money for the several districts and independent districts therein, both that levied by said districts and that distributed thereto by the state. He shall be required by the county court to give therefor, in addition to his bond as collector of the state and county taxes, a special bond with approved security, in a penalty equal to double the amount which will probably come into his hands for school money, which bond it shall be the duty of said court to change from year to year, as the increase of the amount to be collected and disbursed by said sheriff or collector may require. He shall keep his accounts with the several boards of education of each district and independent school district; one of money belonging to the teachers' fund, and the other of money belonging to the building fund, and shall

Sheriff or collector to collect and disburse all school money.

To give special bond.

Penalty of bond.

When court may change bond.

To keep two accounts.

How money paid
out by him.

Annual settlement.
when and with
whom made.

With what to be
charged and with
what to be credited.

If he pay out more
money on account
of either fund than
he receives, to
receive no credit
for excess.

To receive no pay
for disbursing
school money.

Bemedy against
him for failure to
pay on account for
moneys in his
hands.

credit every receipt and charge every disbursement to the proper account. He shall pay out no money standing to the credit of the board of education, except upon an order signed by the secretary and president thereof, specifying the sum to be paid and the fund to which it is to be charged; or upon a certified copy of a judgment or decree against the said board, for a sum of money therein specified, or upon an order of the county superintendent as provided in section eight of this chapter. He shall, on or before the first day of September in each year, settle with the board of education of each district and independent school district, in which settlement he shall be charged with the amount of the general school fund received by him, and the amount of taxes levied by the board of education upon the property of the district or independent school district for the teachers' fund and the building fund, and for any other moneys received by him during the preceding year on account of the free schools of such district or independent school district, and he shall be credited with the amount of delinquent taxes of such district or independent school district, that have been duly returned by him and certified by the clerk of the county court to such board of education. He shall also be credited in such settlement with all vouchers produced by him, if found to be correct by the board of education, and he shall receive no other credit, except his commission, as hereinafter provided; but if he shall pay out more money in any year on account of the teachers' fund, or building fund, than shall have come to his hands during said year, he shall, in said settlement, receive no credit for such excess. He shall receive no pay for the disbursement of any school money. If he fail to account for and pay over, as required by law, any money which may come to his hands, or for which he is liable, judgment may be recovered therefor against him and his securities with interest and

ten per cent. damages, and upon the failure of such sheriff to honor any proper draft which may be drawn by the said board of education upon him, judgment upon motion therefor may be obtained before any justice of his county, or before the county or circuit court thereof, he having had at least ten days' notice of the motion.

Delinquent lists; sale of delinquent lands for district levies.

47. The delinquent lists for district levies shall be returned, and real estate sold therefor as herein-after provided. Such lists of delinquent lands shall be in form or in substance as follows:

Return of delinquent lists.

"List of real estate in the district of —, in the county of —, delinquent for the non-payment of school taxes thereon, for the year —."

Form required for real estate.

Name of person.	Estate held.	Quantity of land.	Description and location of land.	Distance and bearing from court house.	Teacher's fund.	Building fund.	Why returned delinquent.

The delinquent lists of personal property shall be in form or in substance as follows:

Form required for personal property.

"List of personal property in the district of —, in the county of —, delinquent for the non-payment of district taxes thereon, for the year —."

Name of person.	Total value of personal property charged.	Teacher's fund.	Building fund.	Why returned delinquent.

Oath to be sub-
joined to list.

Form of.

And the sheriff or collector returning such list shall at the foot thereof subscribe the following oath: "I, A—— B——, sheriff (deputy sheriff or collector) of the county of ——, do swear that the foregoing list is, I verily believe, correct and just; and that I have received no part of the taxes for which the real estate (or personal property, as the case may be,) therein mentioned is returned delinquent, and that I have used due diligence to find property within my county liable to distress for said taxes, but have found none."

Lists to be pre-
sented to county
court; when.

Court to correct
and certify to
auditor;

Also a copy of list
of real estate to
assessor.

Duty of assessor.

Original lists to be
preserved by clerk,
and amount allow-
ed certified to
board of education.

48. The said lists shall be presented to the county court at their —— term in the —— month of —— in every year, and the same shall be examined, corrected and certified to the auditor and a copy of the list of real estate to the assessor, who shall, in preparing his next land book make the required correction. The original lists shall be preserved by the clerk of the county court in his office, and the amount of the same, allowed by said county court, shall be certified by the clerk of said court to the board of education of the proper district.

Duty of auditor in
relation to such
delinquent taxes.

49. The auditor shall include the taxes so returned delinquent in his lists to be furnished the sheriff for sale for other delinquent taxes.

Lien on all real
estate for district
levies and interest;
from what time.

50. There shall be a lien on all real estate for the district levies assessed thereon from the time of such assessment in such year, and interest upon such levies at the rate of six per cent. per annum from the twentieth day of January in the year following that in which the assessment is made until payment.

Delinquent list of
personal property
to be placed by
clerk in hands of
sheriff for collec-
tion.

How collected and
accounted for.

51. A copy of the list of personal property returned delinquent for the non-payment of district levies shall be placed by the clerk of the county court in the hands of the sheriff or collector for collection, to be collected and accounted for by him in the same manner as for levies originally placed in his hands

for collection ; and he may collect such levies by distress or otherwise, at any time within two years after they are so placed in his hands.

Commission for collecting district levies.

52. Every sheriff or collector shall be allowed such commission as is prescribed in the general law regulating sheriffs' or collectors' commissions. He shall also make annual settlements, by districts, with the county court at its next term after the first of September of each year, showing amount of all moneys received and disbursed by him for the preceding year for school and building purposes from the state fund, and from the district and independent school district, and the amount due to each district ; which settlement shall be made matter of record by the clerk of said court in a book to be kept for that purpose.

Commission of sheriff.

Annual settlement with county court ; when.

What settlement must show.

To be made matter of record by clerk of court.

*See index
17.6.103*

Election of county superintendent.

53. A county superintendent shall be elected as is prescribed in section two of this chapter, on the second Friday in August, in eighteen hundred and seventy-three ; and on the same day and month every two years thereafter. His term of office shall commence on the first day of September next succeeding his election, and continue for two years, and until his successor shall be elected and qualified according to law : Provided, that the term of office of county superintendents elected in eighteen hundred and seventy-three, shall commence on the first day of January, eighteen hundred and seventy-four, and continue till the thirty-first day of August, eighteen hundred and seventy-five, inclusive, and until their successors are elected and qualified.

County superintendent ; election of.

When to take place.

Commencement of term of office.

How long to continue.

Provision as to county superintendent elected in 1873.

54. He shall be a person of good moral character, of temperate habits, of literary acquirements, and skill and experience in the art of teaching. His compensation shall not exceed three hundred dollars in

His character and qualifications.

Compensation.

Account for services; how verified.

How audited and allowed.

How paid.

Not to be paid until he makes reports to state superintendent as required.

Paid out of state fund and amount deducted by auditor, &c.

Bond and conditions thereof.

His liabilities thereon.

Where filed.

Clerk to certify to state superintendent name of such superintendent and post office address; within what time

Provision as to county superintendents elected under former acts.

How long to continue in office.

Their salary.

Vacancies in office: how filled, when and for what time.

any one year. To every account for services made out by him he shall append his affidavit that for the number of days therein charged he was actually and necessarily employed in the discharge of his official duties. When such account is audited and allowed by the county court, the clerk of said court shall report the same officially to the state superintendent of free schools, who shall pay the same by his order drawn upon the auditor in half yearly installments. But no such payments shall be made until the county superintendent has made reports required of him by this chapter to the state superintendent of free schools. The same shall be paid out of the state fund, but the amount thereof shall be deducted by the auditor from the amount next to be distributed to such county. He shall, before entering upon the duties of his office, execute a bond conditioned according to law, before the clerk of the county court of his county, in the sum of five hundred dollars, with approved security, upon which bond he shall be liable in any court having jurisdiction, to any person or persons, or to any district board of education for losses sustained by reason of his neglect or non-performance of duties imposed by this act. Said bond shall be filed in the office of the clerk of the county court, who shall within five days certify to the state superintendent of free schools the name of said county superintendent and his post office address: Provided, that county superintendents elected under provisions of former acts shall continue in office until their successors shall have been elected and qualified under this act, and they shall receive the same compensation for their services, and in the same manner as is provided for county superintendents in this act. Vacancies in the said office shall be filled by the presidents of the boards of education in the county, a majority being present: for which purpose the clerk of the county court shall notify them to meet within ten days after such vacancy shall occur. Such ap-

pointments shall be for the unexpired term, or until a successor has been elected and qualified.

55. The county superintendent shall visit the schools within his county, at least once, at such time as he may deem necessary and proper, and note the course and method of instruction and the branches taught, and give such directions in the art of teaching, and the method thereof, in each school, as to him shall seem necessary or expedient, so that uniformity in the course of studies and methods of instruction employed shall be secured, as far as practicable, in the schools of the several grades, respectively. He shall acquaint himself, as far as practicable, with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school, the classification of its scholars, or the method of instruction employed in the several branches, and shall make such suggestions, in private to the teacher, orally or by writing, as to him shall appear to be necessary to the good order of the schools and the progress of the scholars. He shall note the character and condition of the school houses, the sufficiency or insufficiency of their furniture and fixtures, and shall make such suggestions to the several district boards of education as in his opinion shall seem conducive to the comfort and progress of the scholars in the several schools.

Visits of county superintendent to schools,

When and how often.

His duties in connection with such visits.

It shall be the duty of the county superintendent to aid the teachers in all proper efforts to improve themselves in their profession. For this purpose he shall encourage the formation of county institutes for mutual improvement; shall attend the meetings of such institutes whenever practicable, and give such advice and instruction in regard to their conduct and management as in his judgment will contribute to their greater efficiency. In connection with the superintendents of adjoining counties, each county superintendent shall encourage the formation of union

Duties of county superintendent.

To aid teachers to improve themselves.

Encourage county institutes.

To attend meetings of such institutes.

Give advice and instruction, &c.

Union institutes to be encouraged, &c.

Must conform to instructions of state superintendent.]

To serve as organ. of communication.

To distribute all blanks, &c.

Additional report of county superintendent to state superintendent; what to contain.

To report failure to make levy and enumeration of youth.

To keep record of all his proceedings; certificates issued to teachers and all reports.

Such book of record to be property of office.

No officer or teacher to act as agent for booksellers, &c., or be interested in any contract in relation to books.

institutes; shall attend and participate in the exercises of the same, as far as practicable; and shall use all proper means to improve the efficiency of the teachers, and to elevate their profession. He shall at all times conform to the instructions of the state superintendent of free schools, as to the matters within the jurisdiction of the said superintendent, and shall serve as the organ of communication between him and the several district boards of education. He shall distribute from his office all blanks, circulars, copies of school laws and other communications from the general superintendent to the several boards and persons entitled to receive the same.

56. In addition to the report mentioned in the twenty-second section, it shall be the duty of the county superintendent to make out and transmit to the state superintendent of free schools a detailed report of the condition and character of the schools within his county, noting all deficiencies and suggesting their remedies, with such remarks upon the operation of the school laws as his experience and observation may suggest, pointing out wherein he considers them as deficient, and what amendments are required to render them efficient. He shall also report such districts as have failed to make returns of the enumeration of youth as required in the nineteenth section of this act; and also those districts that have failed to make the levy required in section forty. It shall be the duty of the county superintendent to make in a well bound book to be kept for the purpose, a record of all his proceedings; of all certificates issued by the board of examiners, and of all reports made by him; which book shall be the property of the office.

School officers not to act as agents for booksellers, etc.; school books to be used.

57. No school officer, or teacher of any free school, shall act as agent for any author, publisher, bookseller, or other person, to introduce or recommend

the use of any book, apparatus, furniture, or other article whatever, in the free schools of this state, or any one or more of them, or directly or indirectly contract or receive any gift or reward for so introducing or recommending the same, nor shall such person be otherwise interested in the sale, proceeds or profits of any book or other thing used, or to be used in said schools: Provided, That nothing herein shall be construed to apply to any book written, or thing invented by such person, or merchants who in connection with their business may desire to sell school books or other things used in schools, provided the same are embraced in the prescribed series.

Proviso as to authors, &c., and merchants.

58. The following series of class books shall be used in the free schools throughout the state, viz:

Class books to be used in schools specified.

READING, SPELLING, ELOCUTION.—McGuffey's New Revised Readers; McGuffey's New Eclectic Spelling Book; Kidd's Elocution and Vocal Culture.

MATHEMATICS.—Ray's Arithmetics; Ray's Test Examples; Ray's Elementary and Higher Algebra; Evans' School Geometry for beginners; Robinson's New Geometry and Trigonometry; Robinson's Surveying and Navigation; Robinson's Progressive Table Book.

GRAMMAR.—Harvey's Grammar; Kerl's Treatise for High Schools.

GEOGRAPHY.—Knote's Geography of West Virginia; Mitchell's New Revised Geographies; Cornell's Outline Maps; Guyot's Physical Chart; White's Class Book of Geography for Examinations; Lessons on the Globe—Mary Howe Smith.

HISTORY, NATURAL SCIENCE, ETC.—Goodrich's Common School History; History of the United States—Holmes; Natural Philosophy—Comstock; Philosophy of Natural History—Ware and Smilie; Rhetoric—Blair; Chemistry (new edition)—Youman's; Geography of the Heavens—Burritt; Astronomy (Elementary)—Robinson; Geology—Dana;

Mineralogy—Dana; Botany—Gray; Anatomy and Physiology—Cutter; Dictionary—Webster.

County superintendent to enforce the use of text books prescribed.

Fine imposed on teacher for violating provisions of section.

It shall be the duty of the county superintendent to enforce, by all proper means, the use of the text books, which may be prescribed as herein provided, and to see that no others are introduced; and if any teacher shall violate the provisions of this section, he shall be subject to the fine prescribed in the fifty-ninth section of this chapter.

Fine for violating any of the provisions of this chapter.

When officer or teacher liable on bond for violating provisions of act.

Amount of fine.
How recovered.

Liability for damages or liability of sureties, &c., not affected by fine.

Penalty on board of education for neglect of duty.

59. If any officer or teacher fail to perform any duty required of him by this chapter, or violate any provision thereof, and there is no other fine or punishment imposed therefor by law, he shall be fined not less than three nor more than ten dollars for every such offense, to be recovered before a justice of the peace of the county; and such fine shall not impair or affect his liability for damages to any person injured, nor the liability of himself and sureties on his official bond.

If the board of education of any district or independent school district fail to perform any duty required by this act, each member of such board shall be liable to the full penalty imposed by this section, unless he show that he was not guilty of any neglect or default in the premises.

Annual distribution by the state for support of free schools.

"The general school fund;" from what sources derived.

60. For the support of free schools there shall be a state tax levied annually of ten cents on the one hundred dollars valuation on all the real and personal property of the state, which, together with the interest of the invested school fund, the net proceeds of all forfeiture, confiscations and fines which accrued to the state during the previous year, the proceeds of the annual capitation tax, dividends on bank stock held

by the board of the school fund, and the interest accruing on stock invested in United States bonds, shall be set apart as a separate fund to be called "the general school fund," and shall be annually applied to the support of free schools throughout the state, and to no other purpose whatever. It shall be distributed to the several counties in the state in proportion to the number of youth therein, according to the latest enumeration made for school purposes; but the auditor shall first deduct therefrom the aggregate salary of the state superintendent of free schools, and the necessary traveling and contingent expenses of his office, together with such other sums as may be required to be paid by him out of the general school fund. Fifty per cent. of this distributable sum shall be paid on the fifteenth day, of October, and the remainder on the fifteenth of January, of each year, and in the manner provided in the sixty-first section of this chapter.

To what purpose applied.

Distribution of
In what proportion.

What to be deducted.

When and how paid.

61. It shall be the duty of the auditor, on or before the first day of September, in each year, to ascertain the amount which is distributable among the several counties as aforesaid, and notify the state superintendent of free schools thereof, who shall thereupon ascertain the proper share of each county and notify the auditor and each county superintendent of the same; observing to notify the county superintendent, also, of the amount deducted by the auditor from the share of his county on account of salary paid the county superintendent, as required by section fifty-four, which amount the county superintendent shall also deduct from the share of his county before making his distribution of the same among the several districts thereof. Upon receiving such notice, the county superintendent shall ascertain the proper share of each district and independent school district in his county, according to the number of youths therein, and give notice to the board of education of each dis-

Auditor to notify state superintendent of the amount to be distributed; when.

Duty of state superintendent.

Duty of county superintendent.

strict and independent school district in the county of the amount of the state fund due to each, respectively, and that the same cannot be drawn by them until they have made the levy required by the fortieth section of this chapter.

How state fund drawn.

Secretary of board to notify county superintendent when levy has been laid.

Superintendent then to issue requisition on auditor.

Payable in two equal installments.

Auditor to issue his warrant.

62. Upon being officially notified by the secretary of the board of education in the manner provided for in the forty-fourth section of this chapter, that the board of education has authorized the levy for school purposes, the county superintendent shall issue his requisition on the auditor, payable to the order of the sheriff of his county, for the amount due such districts as may have made the levy aforesaid, in two equal installments, payable on the fifteenth day of October and January, respectively; whereupon the auditor shall issue his warrant upon the treasurer in favor of the said sheriff for the amount of such requisition, indicating in writing upon said warrant the depository upon which the same shall be drawn, and the treasurer shall thereupon be authorized and required to draw his check upon the said depository for the said amount. The requisition of the county superintendent shall be in form or in substance as follows:

Form of requisition of county superintendent.

Office of the County Superintendent of Free Schools,
— county, —, 187—.

Auditor of West Virginia:

Pay to the order of —, sheriff of — county, — dollars, being the amount of state school fund apportioned to the district (or independent school district) of — in said county, for the year 187—, authorized to be drawn on the fifteenth day of —, 187—. It is hereby certified that the said district (or independent school district) has made the levy for school purposes required by section —, chapter — code of West Virginia, and that the sheriff of the county has given the security required in section — of said chapter.

—, county superintendent.

State superintendent of free schools.

63. There shall be elected a state superintendent of free schools for the state whose term of office shall be the same as that of the governor. He shall be a person of good moral character, of temperate habits, of literary acquirements, and skill and experience in the art of teaching. He shall receive annually the sum of one thousand five hundred dollars in payment for his services, to be paid monthly out of the school fund upon warrant of the auditor. If in the performance of any such duty imposed upon him by the legislature, he shall incur any expenses, he shall be reimbursed therefor; provided the amount does not exceed five hundred dollars in any one year.
64. The state superintendent shall reside and keep his office at the seat of government. He shall provide a seal for his office, and copies of his acts and decisions and of papers kept in his office, authenticated by his signature and official seal, shall be evidence equally with the original. He shall sign all requisitions on the auditor for the payment of money out of the state treasury for school purposes, except as hereinafter provided.
65. The state superintendent shall be charged with the supervision of all county superintendents and free schools of the state, and see that the school system is carried into effect. He shall prepare and transmit to the county superintendents instructions how to conduct the elections prescribed in this chapter, to keep and transmit the official records and ballots thereof, and the manner of ascertaining and announcing the results, so as to conform the same to the provisions of this chapter, and also to such provisions of the general election laws of the state as may not be inconsistent therewith; he shall prescribe and cause to be prepared all forms and blanks necessary in the details of the system, so as to secure its uniform operation throughout the state, and shall cause

State superintendent to be elected.Term of office.His character and qualifications.Salary.To be re-imbursed for expenses.His residence.To provide a seal.Acts and decisions: how authenticated and their effect.To sign requisitions on auditor for school purposes.His duties in general.Has supervision of all county superintendents and free schools.To give instructions how to conduct the elections prescribed in this chapter.To keep and transmit official records thereof.Manner of ascertaining and announcing result, &c.Prepare forms.

School laws and forms and instructions annexed to be prepared and distributed.

the same to be forwarded to the several county superintendents, to be by them distributed to the persons entitled to receive the same. He shall cause as many copies of this chapter and other school laws in force, with such forms, regulations and instructions as he may judge expedient, thereto annexed, to be from time to time published, as he may deem expedient, and shall cause the same to be forwarded to the county superintendents, to be by them distributed to the persons entitled to receive them.

To perfect the system.

Collate the results of other countries,

Schools to be made as near as possible equal and uniform in grade throughout state.

To acquaint himself with the different systems and methods of instruction, &c.

To render available improvements in the system of free schools, and the method of instruction, &c.

Annual report to governor: what to contain.

66. It shall be the duty of the state superintendent to aim at perfecting the system of free schools as established in this state, and for this purpose it shall be his duty to correspond with educators and school officers abroad; to acquaint himself with the various systems of free schools established in other states and countries, to collate their results as exhibited in the reports of their several superintendents, and to use all efforts necessary to enable him to render available to the purposes of the legislature, the combined results of the experience of other communities with his own experience and observation. He shall acquaint himself intimately with the peculiar educational wants of each section of the state, and shall take all proper means to supply them, so that the schools shall be as nearly as possible equal and uniform in grade throughout the state. He shall acquaint himself with the different systems and methods of instruction which may be introduced among educators, and shall explain and recommend such as experience and sound principles of education may have demonstrated to be valuable; and it shall be his duty to endeavor to render available to the people of this state all such improvements in the system of free schools, and the method of instruction, as may have been tested and proved by the experience of other communities.

67. He shall, on or before the first day of January, of each year, make a report to the governor, to be by

him transmitted to the next regular session of the legislature, in regard to the condition of free schools within the state, embracing all statistics compiled from the reports of the county superintendents, and such other authentic information as he can procure, which will be necessary to give a proper exhibition of the working system, together with such plans, as he may have matured for the management and improvement of the school fund, and for the better and more perfect organization and efficiency of free schools; and likewise all such matters in relation to his office and to free schools as he may deem expedient to communicate.

Auditor.

68. The auditor shall annually, before the first day of November, deliver to the governor and the state superintendent of free schools, each, a report, made up to the first day of September next preceding, of the condition of the school fund, with an abstract of the accounts thereof in his office, which report the governor shall lay before the legislature at its next regular session.

School fund; annual report of auditor as to condition of.

69. The governor, state superintendent of free schools, auditor and treasurer shall be a corporation under the name of "the board of the school fund," and shall have the management, control and investment of said fund, under the fourth section of the twelfth article of the constitution. The governor shall be the president of the board, and in his absence the board may choose one of their number to preside temporarily in his place. The auditor shall be the secretary of the board. A faithful record shall be kept of all their proceedings, and a copy thereof, certified by the secretary of the board, shall be evidence in all cases in which the original would be.

Board of the school fund; of whom composed.

Their control of fund.

President.

Who to act in his absence.

Secretary.

Record of proceedings.

Copies thereof as evidence.

70. A meeting of the board may be held at any time upon the call of any member thereof, provided

Meeting of board: when and where held and how called.

notice be given to all the members who may be at the seat of government. The auditor's office shall be the place of meeting, and the proceedings shall be signed by the president and secretary of the meeting for that day, and shall be open to inspection at all times.

Proceedings; by whom signed.

Open to inspection.

Moneys due fund how recovered.

71. All money which ought to be paid into the treasury to the credit of the school fund shall be recoverable with interest by action or motion before any court having jurisdiction, and the auditor shall institute and prosecute said action or motion when thereto directed by the board.

Board may appoint agents to collect, &c

72. The board may appoint agents for the collection of debts or claims, and authorize them to secure payment thereof, and protect the interests of the school fund, on such terms as it may approve. They shall take bond from said agent, if any money is to come into his hands; and any agent selling lands, when directed to do so by the board, shall execute a deed, (with the resolutions giving such directions thereto annexed,) conveying to the purchaser by special warranty. Said agent may be allowed by the board a compensation not exceeding, in any case, five per cent. on the money actually paid into the treasury.

Bond of agent.

How agent may execute deeds to lands sold by him.

Compensation; how paid.

State school fund; how invested.

73. All such sums as have accrued, or shall hereafter accrue to this state, from the several sources enumerated in the fourth section of the twelfth article of the constitution, shall be set apart as a separate fund to be called "the school fund," and it shall be the duty of the auditor to ascertain from time to time what sums have so accrued, or may hereafter accrue, and to pass the same to the credit of said fund; and it shall be the duty of the board of the school fund, from time to time to invest the same in the interest bearing securities of the United States, or of this state, or otherwise, as provided for in said fourth

The school fund, how created and from what sources derived.

Duty of auditor as to such fund.

Board to invest fund.

section of the twelfth article of the constitution. And it shall be the duty of said board to sell any investments on account of the school fund now made in other securities than those required in said fourth section of the twelfth article of the constitution, and invest the proceeds thereof in the interest bearing securities of the United States, or of this state, or otherwise, as provided in the constitution aforesaid.

Board to sell investments made in other securities than those now required, and re-invest.

74. The auditor shall be the accountant of the board, exercising any of their powers, except that he shall not, without special authority, entered upon the records of their proceedings, dispose of any property or invest any money of the school fund. He shall place the securities in which said school fund is invested, in such depository for safe keeping as the board shall direct. All money belonging to the school fund shall be received into and paid out of the treasury upon the warrant of the auditor. But no warrant for paying out such money shall be issued without the authority of the board.

Auditor to be accountant of board.

His power.

Securities for money vested: where to be deposited.

How money paid into, and out of treasury.

Warrant not issued without authority of board.

City of Wheeling; certain towns, etc.

75. Nothing in this chapter shall alter or affect the laws now in force respecting the free schools in the city of Wheeling and the parts of districts connected therewith; nor shall anything in this chapter be construed as abolishing any independent school district heretofore created, or as affecting any right or privilege conferred upon them respectively in the acts of the legislature by which they have been created; except so far as such right or privilege may be inconsistent with the provisions of this chapter, in which independent school districts are specifically included. In the independent school districts of Wheeling and Moundsville none but practical educators, who shall have had at least three years of practice as teachers in graded schools, shall be eligible to the office of superintendent.

School laws in force respecting free schools in Wheeling &c., and independent school districts, not affected by chapter.

Exception.

Who eligible to office of superintendent in districts of Wheeling and Moundsville.

West Virginia University.

Agricultural college to remain at Morgantown.

76. "The agricultural college of West Virginia," located and established in pursuance of the act passed February 7, 1867, entitled "An act for the regulation of the West Virginia agricultural college," shall be and remain as so established and located; and all the provisions of said act, except so far as the same may be altered by this chapter, shall remain in full force and effect to the same extent as if this act had not been passed.

Provisions as to laws relating to.

Name of changed to "West Virginia University."

77. The name of said college shall hereafter be the "West Virginia University," by which name it shall have and hold all the property, funds, investments, rights, powers and privileges now had and held under the name prescribed in the above recited act.

Property, &c., to be held under that name.

Board of regents: how composed, appointed and called.

78. For the government and control of the said university there shall be a board of regents consisting of one person from each judicial circuit, to be appointed by "the board of the school fund," to be called the regents of the "West Virginia University," and as such they may sue and be sued, and have a common seal. Any three of the said regents shall constitute a quorum for the transaction of business, except that for making arrangements for the erection of buildings or the permanent alterations thereof, or the appointment to, or removal from, office of professors, the concurrence of a majority of the regents shall be required. Vacancies in the said board shall be filled by "the board of the school fund" as they occur.

Quorum.

Vacancies; how filled.

Funds donated by United States; how and by whom invested.

79. The fund derived from the sale of United States land warrants which have been donated to this state, for the purpose of endowing an agricultural college, shall be invested by the governor in a loan of public stocks of the United States, or otherwise, as required by congress for the use and benefit of the said university.

Attached & Minuted
 177, p. 166.

80. The board of regents shall from time to time establish such departments of education in literature, science, art, agriculture and military tactics as they may deem expedient, and as the funds under their control may warrant, and purchase such materials, implements and apparatus as may be requisite to proper instruction in all said branches of learning, so as to carry out the spirit of the act of congress aforesaid, approved July second, eighteen hundred and sixty-two. And they shall also appoint a superintendent who shall have general supervision and control of the property and interests of said university during the vacation of said board.

Powers and duties
of board of regents.

81. The said board shall establish and declare such rules and regulations and by-laws, not inconsistent with the laws of this state or of the United States, as they may deem necessary for the proper organization, the tuition and good government of said university and the protection of the public property belonging thereto; they shall appoint a treasurer, taking bond from him with ample security, and conditioned for the faithful keeping and disbursing of such money as is herein or may be hereafter appropriated, and such other money as may be allowed by said board to come into his hands from time to time; they shall also settle with him annually, or oftener if they think best; inspect annually all the property belonging to said university, and make a full report of the condition, income, expenditure and management of said university annually to the governor, to be by him laid before the legislature.

Rules, regulations
and by-laws.

Appointment and
bond of treasurer.

To settle with him
annually.

Report to governor.

82. The board shall have power to create a preparatory department to said university, and establish any other professorships than those indicated heretofore, if the same be deemed essential; to fix the salaries of the several professors and of the superintendent, and to remove them for good cause; but in case of removal the concurrence of a majority

Preparatory de-
partment.

Salaries of profes-
sors and superin-
tendent.

Their removal.

of the regents shall be required, and the reasons for a removal shall be communicated in a written statement to the governor.

Further powers of regents as to admission of cadets.

83. Besides prescribing the general terms upon which students may be admitted, the course of their instruction, and the kind and duration of their services, (which duration shall not exceed five nor be less than two years;) the said regents are still further empowered to admit as regular students or cadets of said university from each judicial circuit in the state, three or four, and not more than four, young men, who are not less than sixteen nor more than twenty-one years of age, to be appointed by the regents of said judicial circuit; the admission in each case to be made upon undoubted evidence of a fair moral character. But should no application be made from any said judicial circuits, then the vacancies may be filled from the state at large.

When vacancies filled from state at large.

Privileges of cadets so admitted.

84. The cadets admitted under the provisions of the preceding section shall be entitled to all the privileges, immunities, educational advantages and benefits of the university, free of charge for admission, tuition, books and stationery, and shall constitute the public guard of the university and of the public property belonging thereto; a sufficient number and quantity of ordnance and ordnance stores, and camp and garrison equipage, which shall be kept in the arsenal belonging to the institution. And the professors and the students of the university receiving instruction in military tactics and the art of war, shall be individually and collectively responsible for the preservation and safe keeping of all arms and camp equipage belonging to said institution.

To constitute public guard.

Arsenal.

Who liable for safe keeping of arms, &c.

Expenses of regents; how paid.

85. All reasonable expenses incurred by said regents in discharging the duties hereby imposed upon them, (not, however, including wages or per diem compensation,) shall be allowed by the governor and

paid out of the treasury of the state, in like manner as other sums are drawn therefrom: Provided, however, That such expenditures shall not exceed five hundred dollars per annum.

86. The president, board of regents and faculty may graduate any student of the university found (after proper examination) duly qualified, and shall certify the same by affixing the seal of the university to his diploma. When and how students may graduate. Diploma.

West Virginia State Normal School.

87. The "West Virginia state normal school," established under and by virtue of the act passed February twenty-seventh, eighteen hundred and sixty-seven, entitled "An act for the establishment of a state normal school," shall be and remain at Marshall college, in the county of Cabell, as provided in said act; and all the provisions of said act, and of all other acts in relation thereto, shall be and remain in full force, except so far as the same may be altered by this chapter. For the government and control of said school there shall be a board of regents, consisting of the governor, state superintendent of free schools, auditor and treasurer, together with one person from each congressional district of the state, to be appointed by the governor, who shall be called "the regents of the state normal school," and as such may have a common seal, sue and be sued, plead and be impleaded, contract and be contracted with, and take, hold and possess real and personal estate for the use of said school; and may exchange so much of the real estate now held by them for such use, for other real estate owned by the central land company of West Virginia, as may be necessary to conform the boundary lines of the real estate so held and to be held by them, to the avenues, streets and alleys of the city of Huntington, and execute and receive the proper conveyances therefor. Any such conveyance, State normal school to remain at Marshall College. Provisions as to laws relating to, Board of regents. Governor to appoint three. How called. May have common seal. Their powers. Exchange of land to change boundary lines for certain purposes.

Conveyance for:
how executed.

Transfer of college
to regents legalized.

When property to
revert to Cabell
county.

Regents appointed
by governor; term
of office of.

Regents to control
school.

Establish by-law;
rules and regula-
tions.

Fix the number
and compensation
of teachers, &c.

Appoint and re-
move the same.

Prescribe terms and
conditions on which
pupils shall be re-
ceived, &c.

Branches taught.

Fix number receiv-
ed in normal de-
partment, and
upon what basis.

Normal students,
privilege &c.

executed by and in the name of "the regents of the state normal school," and acknowledged on behalf of said regents by the state superintendent of free schools, shall be valid and effectual to pass to the grantee therein all the title of the state to the real estate conveyed thereby. The transfer and conveyance by the board of supervisors of Cabell county of the lands and buildings of Marshall college to the regents of said school, heretofore appointed, is hereby accepted, confirmed and legalized. But in case the said school should at any time hereafter be removed from the said Marshall college, the said property so conveyed shall revert to and be vested in the county court for the use of the said county of Cabell.

88. The regents appointed by the governor as aforesaid, shall hold their office during his pleasure. The said school shall be under the general supervision and control of the said regents. They shall have full power and authority to adopt and establish such by-laws, rules and regulations for its government as they may deem necessary and proper to effect the object of its establishment, not inconsistent with the laws of this state. They shall fix the number and compensation of the teachers, and others to be employed therein, and appoint and remove the same; prescribe the preliminary examination of pupils, and the terms and conditions on which they shall be received and instructed in said school; the branches of learning to be taught in each department thereof; and shall determine the number of pupils to be received into the normal department of said school, from each county or judicial circuit of this state, conforming as nearly as possible to the ratio of population therein, and the mode of selecting them. The pupils admitted into the normal department of said school shall be admitted to all the privileges thereof, free from all charges for tuition, or for use of books or apparatus; but every such pupil shall pay for all

books lost by him or any damage done by him to such books or apparatus; and any pupil in said school may be dismissed therefrom by said regents or by the executive committee, subject to the approval of the regents, for immoral or disorderly conduct, or for neglect or inability to perform his duties. The state superintendent of free schools shall prepare suitable diplomas to be granted to the students of the normal department of said school, who have completed the course of study and discipline prescribed by said regents. The said regents may establish a pay department in said school, whenever the accommodation thereof will admit of the same, and may admit into such department so many paying students as can be accommodated therein from this or any other state, giving the preference to citizens of this state, whether they desire to become teachers of schools or not. They may cause to be taught in the said department of said school, all or any of the branches of learning usually taught in colleges and seminaries, and for that purpose may establish therein the necessary professorships. They may also make all the necessary rules and regulations for the government of the said department, and prescribe the tuition and terms of admission therein. The said school shall continue to be called and known by the name of "Marshall college."

Diplomas to students in normal department.

Pay department.

Who admitted

Branches taught.

Professorships

May make rules and regulations for said department, &c.

School to be known as "Marshall College."

89. The said regents shall appoint three intelligent and discreet persons, residents of the county of Campbell, who shall constitute an executive committee for the care and immediate management and control of said school, subject to the rules and regulations prescribed by the regents. Said committee shall (subject to the control of said regents) designate the person to take charge of the boarding department of said school and fix the price to be paid for board therein. They shall from time to time make full and detailed reports to said regents of the condition.

Executive committee to be appointed by regents.

Their powers and duties.

Report of to regents

working and prospects of said school, and shall do and perform such other duties in relation thereto as the said regents may from time to time prescribe.

Branch of the State Normal School at Fairmont.

Branch at Fairmont to remain at that place.

Provisions as to former laws in relation to.

To be under jurisdiction of regents.

90. The branch of the state normal school established at Fairmont under and in pursuance of the act passed March fourth, eighteen hundred and sixty-eight, entitled "An act providing for the purchase of the West Virginia normal school at Fairmont," shall be and remain at that place, and all the provisions of said act shall remain in full force, except so far as the same may be altered by this chapter. Said school shall be under the jurisdiction and control of the regents of the state normal school in the same manner and to the same extent as the state normal school at Marshall college.

Branch of State Normal School at West Liberty.

Branch at West Liberty to remain at that place.

Provisions of former acts in relation to.

To be under jurisdiction of regents.

91. The branch of the state normal school established at West Liberty, under and in pursuance of the act passed March 1, 1870, entitled "An act to establish a branch normal school at West Liberty, in Ohio county," shall be and remain at that place, and all the provisions of said act shall remain in full force, except so far as the same may be altered by this chapter. Said school shall be under the jurisdiction and control of the regents of the state normal school, in the same manner and to the same extent as the state normal school at Marshall college.

Branch Normal School at Glenville.

Branch at Glenville

To remain at that place.

Provisions of former laws as to said

92. The branch of the state normal school established at Glenville, under and in pursuance of the act passed the nineteenth day of February, 1872, entitled "An act to establish a branch normal school at Glenville, in Gilmer county," shall be and remain at that place, and all the provisions of said act shall remain

in full force, except so far as the same may be altered by this chapter. Said school shall be under the jurisdiction and control of the regents of the state normal school, in the same manner and to the same extent as the state normal school at Marshall college.

Jurisdiction over to remain with regents.

Branch Normal School at Shepherdstown.

93. The branch of the state normal school established at Shepherdstown, under and in pursuance of the act passed and approved February 14, 1872, entitled "an act to establish a branch normal school at Shepherdstown, in the county of Jefferson," shall be and remain at that place, and all the provisions of said act shall remain in full force except so far as the same may be altered by this chapter. Said school shall be under the jurisdiction and control of the regents of the state normal school, in the same manner and to the same extent as the state normal school at Marshall college.

Branch at Shepherdstown.

To remain at that place

Provisions of former acts relating to.

To be under jurisdiction of state regents.

To prohibit dealings with students.

94. If any money be lent or advanced, or anything be sold or let to hire, on credit to or for the use of any student or pupil under twenty-one years of age, at the West Virginia university, the West Virginia state normal school or any of its branches, or any incorporated college in the state without the previous permission in writing of his or her parent or guardian, or the president or principal of such institution, nothing shall be recovered therefor, and there shall, moreover, be forfeited to the state twenty dollars, and the amount or value of such thing. When such selling, letting, lending or advancing is by an agent, such forfeiture shall be by his principal, unless the principal shall within ten days after he has knowledge or information of the selling, letting, lending or advancing, give notice in writing of the date, nature and amount thereof to the president or other head

Lending to, or dealing on credit with, students who are minors prohibited.

Forfeiture for violation.

When principal or agent liable.

What notice must show.

To whom given.

Expectation of immediate payment no violation if notice be given to proper person.

of the institution, in which case the forfeiture shall be by the agent. This section shall not apply to a person selling or letting in expectation of immediate payment, if he shall, within ten days thereafter, give notice in writing of the date, nature and amount of the sale or letting to such president or head.

CHAPTER CXXIV.

AN ACT to amend and re-enact sections fifteen and seventeen of chapter one hundred and forty of the code, concerning executions for specific property and writs of *feri facias*.

Approved November 4, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections fifteen and seventeen of chapter one hundred and forty of the code be amended and re-enacted, so as to read as follows :

"15. Subject to the limitations prescribed by law, a party obtaining an execution may sue out other executions at his own costs, though the return day of a former execution has not arrived ; and may sue out other executions at the the defendant's costs, where on a former execution there is a return by which it appears that the writ has not been executed, or that it or any part of the amount thereof is not levied, or that property levied on has been discharged by legal process, which does not prevent a new execution on the judgment. In no case shall there be more than one satisfaction for the same money or thing."

"17. A motion to quash an execution may, after reasonable notice to the adverse party, be heard and decided by the court whose clerk issued the execution, or if in a circuit court, by the judge thereof in vacation ; and such court or judge may, without such notice, make an order staying proceedings on the execution until such motions can be heard and determined. A copy of the order so made must be served upon the officer in whose hands the execution is."

2. This act shall be force from its passage.

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CHAPTER CXXV.

AN ACT to amend and re-enact the second section of an act approved March 25, 1873, concerning the removal of obstructions from the South Branch river and two of its tributaries.

Approved November 11, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the second section of an act passed March 25, 1873, entitled, "An act concerning the removal of brush, trees and other obstructions from the South Branch river and two of its tributaries in Hardy, Grant and Pendleton counties," be, and the same is hereby, amended and re-enacted so as to read as follows :

Appointment of Commissioners.
When court may appoint

"2. That in order to carry out the spirit and true intent of this act, the county courts for each of the said counties shall, at any term thereof, in 1873 or 1874, and every two years thereafter, appoint a commission of three discreet freeholders, in each of their respective counties, whose duty it shall be, once in every year, or oftener if required by their respective county courts, to examine the islands and banks of the said South Branch and tributaries, within the limit of the said counties, and ascertain if there are any trees, brush, or other obstructions, permitted to stand by any owner of the lands lying on said rivers, or of any island in said rivers, which would obstruct the free passage of the waters, and thereby injure any adjacent lands thereto, or along the said rivers within the limits of the said counties : Provided, That no such appointment of commissioners shall be required in any county in which appointments have already been made under the act hereby amended."

Their duty.

Appointment of Commissioners.
Hereafter made to be valid.

Commencement.

2. This act shall be in force from and after its passage.

CHAPTER CXXVI.

AN ACT changing the line of the Morgantown independent school district, in the county of Monongalia.

Approved November 12, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the boundary line of the Morgantown independent school district, in the county of Monongalia, be changed so that the line running along the Beverly turnpike road south of Morgantown, shall extend no further south than the southeastern corner of the Dering lot on said turnpike road, and thence with the southern line of said lot to the Monongahela river where it shall connect with the original line of said district.

Morgantown Independent School District Boundary line of, changed.

CHAPTER CXXVII.

AN ACT requiring labor of convicts sentenced to confinement in the county jails of this state.

Passed November 12, 1873.

Be it enacted by the Legislature of West Virginia :

1. Whenever hereafter any person shall be convicted of petit larceny, or other infamous offenses, the punishment for which by law is confinement in the county jail, the court may, at its discretion, add to such confinement hard labor in the county jail during the whole or any part of the term of confinement : Provided, such confinement is for any offense committed after the passage of this act ; and, Provided further, That for the purposes of this act, and none other, the

Persons convicted of petit larceny or other infamous offense

Penalty therefor. Provided.

Construction of
the words "County
Jail."

county jail is hereby declared to extend to any place within the limits of the county without the walls of the jail building.

Duty of sheriffs as
to convicts sen-
tenced to hard la-
bor.

2. It shall be the duty of the sheriff to adopt such measures and obtain such employment for the convicts, sentenced to hard labor aforesaid, as he may deem best, so that the greatest amount may be realized from the labor of said convicts; but the county court, whenever it deems it expedient, may direct the sheriff to employ any or all of the convict labor aforesaid, upon any public road, bridge, poor farm, public building or grounds.

Court may order
them to be employ-
ed on public roads,
bridges, &c.

Sheriff to make re-
turn to county
court.

3. The Sheriff shall make return to each term of the county court of the number of days worked by each convict, the kind of work employed upon, and the amount of money, if any, received therefor; and which amount shall be charged with, and account for as other county funds.

To be charged;
with and account
for money received.

4. The sheriff, deputy sheriff, or guard, for every day he may be engaged in supervising the labor of any of said convicts, provided there be more than two of such convicts, shall be allowed and paid out of the county treasury the sum of one dollar: Provided, That for each fractional part of a day he shall only be allowed proportionally at the rate of one dollar per day for his services.

Compensation of
sheriff or guard.

Duty of sheriff to
prevent the escape
of convicts.

5. When a convict is taken outside of the jail building to labor, it shall be the duty of the sheriff to adopt some humane and safe method of preventing escape.

CHAPTER CXXVIII.

AN ACT authorizing the Weston and Clarksburg Railroad Company to change its route so as to pass by Buckhannon and Phillippi, and terminate in

Taylor county, either on the Northwestern Virginia Railroad, or the Baltimore and Ohio Railroad, at such point as may be agreed upon, and to repeal the twelfth section of the act incorporating the Weston and Clarksburg Railroad Company.

Passed November 12, 1872.

Be it enacted by the Legislature of West Virginia :

1. That the board of directors of the Weston and Clarksburg Railroad Company, when organized, may select a route for their road from or near Grafton or Webster, in the county of Taylor, through the counties of Barbour and Upshur, to Weston. Change of route authorized.

2. Any county, and any district of a county representing a former township in any county through which the road may pass, may subscribe to the capital stock of said company, by a vote of the people thereof, and the county court of any such county may prescribe the time, terms and manner of taking such vote, and the terms and conditions of subscribing: Provided, always, that the same do not conflict with the Constitution of this State. Subscription to the capital stock. How made. Proviso?

3. If any county, or any district of a county, shall deem it appropriate to indorse the bonds of the company in lieu of a subscription, the county court of any such county may do so in such manner and on such terms as may be agreed upon between the company and county; and the court of the county shall be the agent of the county or district therein, to make such subscription or endorsement as may be determined by the votes of the county, or district, as the case may be. And if the majority of the votes in any county or district therein be sufficient to authorize a subscription by the county, as required by the constitution for a county, the same majority for a district may authorize the county court to subscribe therefor under such rules and regulations as may be deter- Endorsement of bonds of a company in lieu of a subscription by a county or district. When determined, county court to make such subscription or endorsement. What vote in a district may authorize the county court to subscribe to the capital stock. Time and manner of voting and certifying the election in any county or district.

County court to prescribe.

mined by the court of such county, by order entered of record before such vote be taken. The county court of the county so voting shall prescribe the time and manner of voting, and certifying the election in any county or district. Each county court shall provide for the time and manner of the election in the county, as well for the county as any district therein. and the conditions upon which a subscription shall be made to the capital stock of said railroad company.

Provision as to the subscription of Taylor, Barbour or Upshur county.

4. It is further provided that no subscription of Taylor, Barbour, or Upshur county, or any district in either county, shall be binding, unless the said road shall be located and constructed by an appropriate route through said counties and districts.

Sections of act incorporating, repealed.

5. Section twelve of the act incorporating said railroad company is hereby repealed; and, also, so much of section two of said act as describes the route of said railroad, viz: the words "from the town of Weston, in Lewis county, to some point on the Northwestern Virginia Railroad, in Harrison county;" and whenever any county or district shall have subscribed fifty shares to the capital stock of said company, it may be organized in the same manner it could be if actual payment had been made.

Subscription of fifty shares, authorizes organization.

Commencement.

6. This act shall be in force from its passage.

CHAPTER CXXIX.

AN ACT to provide for holding circuit courts where from any cause the judge shall fail to attend, or if in attendance, cannot properly preside.

Passed November 14, 1873.

Be it enacted by the Legislature of West Virginia:

1. That where, from any cause, a judge shall fail to attend, on the first day of the term of a circuit court for any county to hold the same, the attorneys-at-law practicing in said court, or a majority of those in attendance, by writing under their hands, may appoint some discreet and proper person, learned in the law, and a citizen of the state, to act as judge of the said court for the term, who shall, before some person authorized to administer an oath, before proceeding to discharge the duties of the office, make oath or affirmation that he will support the constitution of the United States, and the constitution of this state, and that he will faithfully discharge the duties of his said office to the best of his skill and judgment. The certificates of appointment and the making of said oath or affirmation shall be entered in the proceedings of said court.

Appointment of a person to act as judge of a circuit court when the judge fails to attend.

If so appointed.

His oath.

Oath and certificate of appointment to be entered of record.

2. That the person so appointed to hold the term of said court shall possess all the powers, while holding the same, as are conferred by the constitution and laws upon the judge of the said court, and his acts, judgments, decrees and proceedings shall be as binding, and have the same force and effect upon persons and things as if done, rendered and performed by the judge of the said court.

His powers.

Validity of his acts.

3. That the person so appointed to hold the term of said court, shall after his appointment and qualification, at the proper time, open the term of said court, and proceed to transact all the business therein that is required to be transacted, and in all things to do and perform the duties devolving upon the judge of the said court, if present and holding the same; that he shall cause the judgments, decrees and other proceedings of the said court to be entered on the proper books kept for the purpose, and shall cause to be read, and when read shall sign, each day's proceedings in the same manner as by law they are required to be signed by the judge of the said court, when present.

Duties of the person so appointed.

When person so appointed to vacate bench, and his powers and duties cease.

Appointment of a person to act as judge of a circuit court when the judge thereof cannot properly preside.

How appointed.

His oath, to be entered of record.

His powers.

Validity of his acts.

Power to grant a new trial, &c.

Appeals to the Supreme Court.

Law taken.

Salary of presiding or acting judge.

4. That if a judge of a circuit court during the said term, shall appear to assume and discharge the duties of his office, the bench shall be vacated by the person so holding the term, and his powers and duties from that time shall cease.

5. That if a judge of a circuit court in attendance and holding the term in any county, cannot properly preside at the trial of any cause pending therein, the parties or their attorneys, by writing under their hands; may appoint some discreet and proper person learned in the law, and a citizen of this state, to act as judge and preside at the trial of said cause. The person so appointed shall take the oath prescribed by the first section of this act, which shall be entered in the proceedings of the said court; and he shall thereupon proceed with the trial of the cause, and while so engaged at the trial thereof, shall possess the same powers and authority that are conferred upon the judge of the said court by the constitution and laws. The judgment, decree, or proceedings in the trial of said cause shall be entered in the proper book of the said court, and read and signed by the judge of the court among the other proceedings of the said court, and have the same force and effect as the other judgments, decrees, or proceedings of the said court. The person so presiding at the said trial shall have the same power to grant new trials, and sign bills of exceptions to his rulings as are conferred upon the judge of said court.

6. That appeals may be taken to the supreme court of appeals from judgments, decrees or other proceedings under this act, in the same manner and to the same extent as if such judgments and decrees were rendered, or proceedings had, in the circuit courts held by the judges thereof.

7. That any person presiding or acting as judge under the provisions of this act, shall be entitled to

receive ten dollars per day, to be paid out of the public treasury.

8. The clerks of the circuit courts shall, at each term thereof, make out, under the directions of the court, and enter in a book to be kept for that purpose, a list of attorneys-at-law, residents of this State, and practising in the said courts; and only such attorneys as appear on such list shall be authorized to appoint persons to hold terms of courts under the provisions of the first section of this act.

Clerks of circuit courts to make out list of attorneys, &c..

Who may appoint a person to act as judge under the provisions of this act.

9. This act shall be in force from its passage.

Commencement.

CHAPTER CXXX.

AN ACT requiring the executive officers of the state to certify the election of the members of the forty-third congress of the United States, from the several districts of this state.

Passed November 15, 1873.

WHEREAS, The duty of ascertaining who were elected to the house of representatives of the congress of the United States, from the several districts of the state of West Virginia, has not been performed by the officer upon whom it was devolved by law, by reason whereof the said state will be without representation in the house of representatives at the meeting of the forty-third congress, and the interests of the people of the said state in said body, for a considerable length of time, neglected and unattended to; for the remedy whereof,

Preamble.

Be it enacted by the Legislature of West Virginia:

1. That the executive officers, consisting of the governor, secretary of state, state superintendent of

Executive officers to ascertain who have been elected to the 43d Congress from the several districts of this State.

And furnish certificates of election and certify the names of persons elected to the House of Representatives.

Commencement.

free schools, auditor, treasurer and attorney general, or a majority of them, proceed immediately to ascertain from the returns of elections held in each of the congressional districts of this state, returned to and filed in the executive office, who have been elected from the said districts to the house of representatives in the forty-third congress of the United States: and furnish to each member a certificate of his election, to which the secretary of state shall affix the great seal, and that the names of the persons ascertained to be elected be certified under said seal to the house of representatives.

2. This act shall be in force from its passage.

CHAPTER CXXXI.

AN ACT to defray the expenses of removing Mary Allen, a lunatic, from the county jail of Nicholas county to the county seat of Orleans county, New York.

Approved November 17, 1873.

Preamble.

WHEREAS, It is represented that one Mary Allen, a lunatic now confined in the jail of Nicholas county, is a resident of Orleans county, New York; and the proper authorities of said county and state having been informed of the condition of said Mary Allen, have refused to send for her. Therefore,

Be it enacted by the Legislature of West Virginia:

Auditor to issue his warrant on the treasurer in favor of sheriff of Nicholas county, for two hundred dollars to remove Mary Allen a lunatic from that county, to Orleans county, New York.

Sheriff to return to Auditor an account of the expenses, under oath, and refund any excess of the amount appropriated.

1. That the auditor draw his warrant on the treasury in favor of the sheriff of Nicholas county for the sum of two hundred dollars, to be paid out of any money in the treasury not otherwise appropriated, to defray the expenses of removing Mary Allen from the county jail of Nicholas county to the county seat of Orleans county, in the state of New York. But the sheriff shall return to the auditor an account of his

expenditures, under oath, and if the sum hereby appropriated shall exceed the expenditures, and five cents per mile for going and returning, the said sheriff shall refund the residue to the treasury.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CXXXII.

AN ACT giving the consent of the Legislature of the state of West Virginia, to the purchase by the United States, of land within the state for public purposes.

Approved November 17, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the consent of the Legislature of West Virginia, be, and same is hereby given to the purchase by the government of the United States, or under the authority of the same, of any tract, piece, or parcel of land from any individual or individuals, bodies politic, or corporate within the boundaries or limits of the state, for the purpose of erecting thereon light houses, beacons, works for improving navigation, post offices, custom houses, or any other needful public structures whatever ; and all deeds, conveyances of title, papers for the same, shall be recorded as in other cases upon the land record of the county in which the land so conveyed, may lie : Provided, That the quantity of land shall not at any place exceed five acres, and that the state of West Virginia, hereby reserves the right to execute process both civil and criminal, within the limits of any lot or parcel of land so purchased by the United States ; the consent herein, and hereby given, being in accordance with the seventeenth clause of the eighth section of the first article of the constitution of the United States,

Amended 7/1/1875
United States authorized to purchase land within this State for public purposes.

Deeds conveyances &c., how recorded.

Quantity of land at any one place not to exceed five acres.

Reserve right of the State to execute process both civil and criminal

Law governing the right hereby granted.

and with the acts of congress in such cases made and provided.

Land purchased by
United States ex-
empted from taxa-
tion by the State.

2. The lots, parcels, or tracts of land so purchased, together with the tenements and appurtenances for the purposes before mentioned, shall be held exempt from taxation by the state of West Virginia.

Commencement.

3. This act shall be in force from, and after its passage.

CHAPTER CXXXIII.

AN ACT to provide for free education in Bethany College.

Approved November 17, 1873.

Be it enacted by the Legislature of West Virginia :

Three thousand
dollars authorized
to be paid annually
to Bethany College
for the purpose of
free collegiate edu-
cation.

1. That to increase the facilities of the state for free collegiate education, and to extend greater opportunities to the young men of the state for obtaining, within its limits, classical and scientific instruction of the highest order, there shall be paid annually to Bethany College the sum of three thousand dollars, in equal semi-annual payments, on the first day of October and the first day of April of each year. The first payment shall take effect on the first day of October, 1874, and shall not be drawn before that time. In consideration of which said college shall be required to admit to the free privilege of her several courses of study, free of all charges for tuition, a number of students each session equal to the number of counties in the state. Each county of the state shall, upon the nomination of the regents of the state normal school, be entitled to send one student, who shall be sufficiently advanced to enter the freshman

Payments when
made.

Number of students
to be taught in each
session free of all
charges for tuition.

Each county enti-
tled to send one
student.

How nominated.

Qualification of stu-
dents nominated,

class of said college, with privilege to continue him for a number of years, to be determined by said board, but not to exceed four full sessions or collegiate years of said college. Should any county fail to embrace the privileges herein provided, on or before the first day of September of any year, then said regents may nominate a student, or students, to fill any vacancy so occurring, from any other county, or counties, which may apply. But appointments so made shall only be from year to year, and shall not be renewed, if the county entitled to the nomination shall present an acceptable candidate for the place. Students sent under the provisions of this act shall be, in all respects, on the same foundation as paying students, as to the discipline, privileges and advantages of said college, but without charge for tuition. They shall, also, without charge, be entitled to, and receive, the same benefits and use of libraries, museums, apparatus, and class and lecture rooms, that are extended to paying students, and be admitted to equal participation, and upon the same terms with them in all the honors and degrees conferred by said college. It shall be the duty of said regents to superintend the faithful execution of the conditions of this act, and report annually to the governor the results of its operation.

Privilege of student not to exceed four full sessions.

Failure of any county to present an acceptable candidate.

Regents may nominate a student from any other county to fill vacancy which may apply.

Such appointment to be made only from year to year.

When not to be renewed.

Privilege of students sent under the provisions of this act.

Additional benefits and privileges.

Duty of Regents of State normal school

2. This act shall take effect from and after the same shall have been accepted and agreed to by the board of trustees of Bethany College aforesaid, and shall continue in force for four years only.

When act to take effect.

How long to continue in force.

CHAPTER CXXXIV.

AN ACT to provide for the sale of escheated, forfeited and unappropriated lands for the benefit of the school fund.

Passed November 18, 1873.

Be it enacted by the Legislature of West Virginia :

1. That chapter one hundred and five of the code of West Virginia be amended and re-enacted so as to read as follows:

What lands to be sold for the benefit of the school fund.

"1. All waste and unappropriated lands within this state, and all lands in this state heretofore vested in the state of Virginia by forfeiture or purchase at the sheriff's or collector's sale for delinquent taxes and not released and exonerated or redeemed within one year, according to law; all lands heretofore or hereafter purchased for this state, at a sale thereof for taxes, and not redeemed within one year, according to law; and all lands forfeited to this state for the failure to have the same entered upon the books of the assessor and charged with the taxes thereon, as provided for by law, shall, so far as the title thereof shall not be vested in junior grantees or claimants under the provisions of the constitution and laws, be sold for the benefit of the school fund, in the manner hereinafter prescribed. The auditor shall certify to the clerk of the county court a list of all such lands, which, or the greater part of which, lie in his county, within sixty days after the title thereto shall vest in the state.

Auditor to certify list to clerk of county court.

Commissioner of school lands to be appointed.

"2. It shall be the duty of the circuit courts from time to time to appoint for each county of their respective circuits a commissioner, to be styled the commissioner of school lands, whose duty it shall be to ascertain and report to said courts the quantity of land in his county subject to sale, according to the provisions of the preceding section, designating particularly the number of tracts, their local situation, and the quantity and probable value of each, together with all the information which he may be enabled to procure in relation to the title to such lands; and where necessary he may employ a surveyor to survey the same.

His duties, &c.

Duty of surveyor.

"3. It shall be the duty of the surveyor of each

county in this state, as soon as the same shall come to his knowledge, to report to the commissioner all waste and unappropriated lands in his county, except the lands under the bed of the Ohio river, subject to sale under the provisions of this chapter; designating particularly the quantity of each tract or parcel, and the local situation thereof, together with all the information he can procure in relation to the same, and of any claim of title thereto, and upon the petition to subject the same to sale, being filed, the clerk of the circuit court shall summon the parties claiming title thereto, to show cause why the same shall not be sold for the benefit of the school fund.

Parties claiming title to be summoned.

"4. Upon the return of said commissioner it shall be the duty of the court, by order entered of record, to direct the said commissioner to make sale of said lands in the same manner in all respects as in the case of other lands directed to be sold under decrees of said court: Provided, That no one tract of land

Court to order sale of lands returned by commissioners

so sold shall contain over six hundred and forty acres, and that no such sale shall be made elsewhere than

Not more than 640 acres to be sold in one tract.

at the court house of the county in which the land directed to be sold is situated, on some court day for

Sale when and where made.

such county, nor unless public notice of the time and place of sale shall have been published in some newspaper nearest the place of sale, and also posted at the door of said court house, and at least four of the most public places in said county, for thirty days next preceding said sale. The said courts are also authorized and required in all cases to direct such surveys

Notice of sale.

and divisions of the lands as may be deemed necessary and expedient to promote advantageous sales thereof, the expenses of which shall be reported to

Surveys, etc.

the court and paid out of the proceeds of such sales. But in no case shall the state be liable to any expense, by reason of such survey, beyond the proceeds of said sales, and no survey of any such lands shall be executed unless the surveyor will consent to receive his

compensation for his services in making such survey, out of the proceeds of said lands.

Terms of such sale
and duties of com-
missioners in rela-
tion thereto.

"5. The commissioner shall require one-fourth of the purchase money to be paid in hand, and also bond, bearing interest from date, with good security, payable in twelve months, for the residue of the purchase money, and shall retain the title to, and a lien on, said lands for the residue of the purchase money, until the same is fully paid. He shall return a report of sales made by him, to the court from which he received his appointment, and also to the auditor, designating particularly the local situation of each tract, the name of the purchaser, the price at which it was sold, and the cost of sale, and the court shall confirm the report unless it be excepted to and competent evidence be offered to show that it should be set aside. He shall also return the bonds taken for the deferred installments of the purchase money, to said court, and they shall have the force of judgments: and upon the failure of the obligors to pay the same when due, to the commissioner, it shall be his duty to employ a competent and reliable attorney, who, after giving the obligors ten days' notice, shall move said court for an award of execution on said bonds, for which services he shall be allowed the same fees as on other motions of a like kind, which, together with the other necessary costs and commissions attending the collection of said bonds, shall be taxed and included in the execution. The commissioner shall pay into said court all moneys collected or received by him on such sales, and the court shall thereupon make an order allowing him such commissions, not exceeding ten per cent. and other reasonable expenses attending the survey and sale of said lands, as in its judgment may seem proper, and direct the residue thereof to be paid into the state treasury for the benefit of the school fund.

"6. It shall be the duty of the prosecuting attor-

ney in each county to appear and represent the interests of the state in all matters pertaining to the sales and other proceedings directed by this chapter.

Prosecuting Attorney; his duties.

"7. Before any commissioner under this chapter shall discharge the duties required of him, he shall take an oath in open court to faithfully discharge the duties of his office according to the best of his skill and judgment, and also give bond in open court in a reasonable penalty, to be fixed by the court, with at least two good securities, conditioned that he will faithfully pay over and account for, according to law and the order of said court, all money, bonds or other securities, and do and perform all other duties required of him by the provisions of this act."

Bond and oath of commissioners.

"8. When a purchaser of any lands at such sale shall have paid the whole of the purchase money, the court shall direct said commissioner (or another commissioner appointed for the purpose,) to convey to the purchaser all the interest of the state in said lands. He shall return a report of sales made by him to the court from which he received his appointment and also to the auditor, designating particularly the local situation of each tract, the name of the purchaser, the price at which it was sold, and the costs of sale.

Deed to purchaser; when made.

Commissioner's report.

"9. No lands shall be sold under the provisions of this chapter, if any person shall have had actual continuous possession thereof, under color or claim of title for ten years, and who, or those under whom he claims, shall have paid the state taxes thereon for any five years during such possession, or for so much thereof as any person, other than those for whose default the same may have been forfeited or returned delinquent, their heirs or devisees, shall have title or claim to regularly derived mediately, or immediately from, or under grant from the commonwealth of Virginia or this state, not forfeited, which but for the title forfeited would be valid, and who, or those under whom he claims, has, or shall have, paid all state

Rights of certain occupants protected.

taxes charged, or chargeable thereon for five successive years, after the year one thousand eight hundred and sixty-one, or from the date of the grant, if it shall have issued since that year, or for so much of said land as any person other than those for whose default the same may have been returned forfeited or delinquent, shall have had claim to, and actual and continuous possession of, under color of title for any five successive years after the year one thousand eight hundred and sixty-five, and have paid all state taxes charged, or chargeable, thereon for said period, and the title of the state to such lands, shall be deemed to be transferred to, and vested in, such occupants, and to such other occupants as, under the constitution and laws of the state, are entitled thereto.

"10. Before any sale of lands is made under this chapter, the court may direct a survey thereof to be made to ascertain the quantity and bounds of the land to be sold, and cause a plat and certificate of such survey to be returned and filed with the papers in the case, and may, also if deemed necessary, cause such plat and certificate to be recorded in the office of the clerk of the county court.

"11. The court shall ascertain and allow all just expenses attending the reporting and sale of the said lands, and collecting the proceeds, and the commissioner shall pay the same out of the first moneys that shall come into his hands on account of the sale, and shall immediately pay the residue into the treasury.

Certain expenses to be made.

"12. The former owner of any such land, shall be entitled to recover the excess of the sum for which the land may be sold over the taxes charged and chargeable thereon, or which if the land had not been forfeited, would have been charged or chargeable thereon, since the formation of this state, with interest at the rate of twelve per centum per annum, and the costs of the proceedings, if his claim be filed in the circuit court that decrees the sale, within two years

Former owner on titled to excess.

thereafter, as provided in the next section.

"13. Any such owner may within the time aforesaid, file his petition in the said circuit court stating his title to such lands, accompanied with the evidences of his title; and upon full and satisfactory proof that ^{May recover the same.} at the time the title to said lands vested in the state, he had a good and valid title thereto, legal or equitable, superior to any other claimant thereof. Such court shall order the excess mentioned in the next preceding section to be paid to him; and upon a properly certified copy of such order being presented to the auditor, he shall draw his warrant on the treasury in favor of such owner, or his personal representative for such excess. At any time before the sale of any such land as herein-before mentioned, such former owner or any creditor of such former owner of ^{Former owner may redeem land at any time before sale.} such land, having a lien thereon, may pay into court by and with the consent of the court, all costs, taxes and interest due at the time, as provided for in section twelve of this chapter, and have an order made in the order book of such court describing the amount paid in as well as the character of his claim to said land, which order so made shall operate as a release of all former taxes on said land, and no sale thereof shall be made: Provided, That such payment shall in no way affect or impair the title to any portion of such land transferred to and vested in any person, as provided in section three of article thirteen of the ^{Proviso.} constitution."

2. This act shall be in force from its passage.

CHAPTER CXXXV.

AN ACT changing the time for holding the county court in the counties of Jefferson, Roane, Greenbrier, Braxton and Webster.

Approved Novembr 21, 1873.

Be it enacted by the Legislature of West Virginia:

Time changed for
holding the county
court in Jefferson
county.

1. That the county court of the county of Jefferson shall be held on the third Monday of January, March, May, July, September and November.

Roane county.

2. That the county court of the county of Roane, shall be held on the third Monday of January, July, August, October and November and the second Monday in May.

Greenbrier county.

3. That the county court of Greenbrier county, shall hereafter be held on the first day of January, the first day of March, the twenty-fifth day of April, the first day of July, the first day of September and the twenty-fifth day of November of each year.

Braxton county.

4. That the county court of the county of Braxton, shall be held on the first Tuesday in January, March, May, July, September and November, of each year.

Webster county.

5. That the county court of the county of Webster shall be held on the first Tuesday in February, April, June, August, October and December, of each year.

Inconsistent acts
repealed.

6. All acts and parts of acts inconsistent with this act, are hereby repealed.

Commencement.

7. This act shall be in force from and after the first day of January, 1874.

CHAPTER CXXXVI.

AN ACT to confer additional jurisdiction upon the circuit courts.

Passed November 21, 1873.

Be it enacted by the legislature of West Virginia :

Additional Jurisdiction
of circuit
courts.
To have concurrent
jurisdiction with

1. The circuit courts shall have concurrent jurisdiction with the county courts in all matters of probate of wills, the appointment and qualification of personal

representatives, guardians, committees and curators county courts as to probate of wills, &c. and the settlement of their accounts.

2. This act shall take effect from its passage.

Commencement.

82 c/h 5-1

CHAPTER CXXXVII.

AN ACT to amend and re-enact section eleven of chapter one hundred and twenty-seven of the code, concerning the death of parties, and the discontinuance of causes not prosecuted.

Approved November 25, 1875.

Be it enacted by the Legislature of West Virginia:

1. That section eleven of chapter one hundred and twenty-seven of the code be amended and re-enacted Section 11 of Chap. 127 of code amended and re-enacted. so as to read:

"11. Any court may, on motion, re-instate on the trial docket of the court, any cause dismissed, and set aside any non-suit that may be entered by reason of the non-appearance of the plaintiff, within two terms if in a circuit court, and four terms if in a county court after the order of dismissal may have been made or order of non-suit entered." When causes may be re-enstated and non-suits set aside.

2. This act shall be in force from its passage.

Commencement.

82

CHAPTER CXXXVIII.

AN ACT amending chapter sixty-five of an act passed March 28, 1873, concerning commissioners in chancery, prescribing the number of each court and tribunal, for the appointment of commissioners by a judge of the circuit court in vacation, and defining the cases in which commissioners may act; what they shall do and the oath they shall take; and

providing for the execution of orders hereteforo directed.

Passed November 25, 1873.

Chapter 65 of acts
1872-3 amended and
re-enacted.

Be it enacted by the Legislature of West Virginia:

1. That chapter sixty-five, entitled, "An act amending and re-enacting sections one and two of chapter one hundred and twenty-nine of the code, in relation to commissioners in chancery," passed March 28, 1873, be amended and re-enacted so as to read as follows:

Commissioners,
how appointed.

Their powers.

"1. Each circuit and county court, and every tribunal established in lieu of a county court, now existing, or which may hereafter be established with the jurisdiction of a county court, and every court of limited jurisdiction established for any incorporated town or city, may from time to time appoint commissioners for executing its orders and decrees, and for settling accounts of fiduciaries, with power to take depositions and to swear and examine witnesses and certify their testimony.

Oath of Commissioner.

"2. Every such commissioner before proceeding to act shall take an oath to faithfully and impartially discharge his duties.

Number that may
be appointed.

Authority to fill
vacancy.

3. Not more than four commissioners shall be appointed by any court hereinbefore named, or by any tribunal established in lieu of a county court, but authority to appoint four commissioners by each court and each tribunal established in lieu of a county court and to fill any vacancy that may occur, is hereby given.

Every order of reference heretofore made may be proceeded with and finally reported upon by the commissioner appointed.

Recommitment of report. Manner an effect of.

"4. Every order of reference heretofore made by any court or tribunal may be proceeded with and finally reported upon by any commissioner appointed or acting in the premises; and such report may be recommitment to any such commissioner for other and final report in the same manner, and to the same effect as if

the appointment and report were made under the provisions of this act.

"5. At law in any case where it may be deemed necessary, the court may direct any such commissioner, or other competent person, either before or at the time of trial, to audit, and strike balances, which commissioner or other person shall be allowed for such service the same fees that would be allowed a commissioner for similar service, to be taxed in the bill of costs.

When court may direct commissioner or other person to audit and strike balances.

Fees allowed in such cases.

How taxed.

"6. A cause may be heard upon a commissioner's report, if in equity only, after it shall have been returned twenty days, and if the report be under an order re-committing a former report the cause may be heard without waiting the said twenty days.

When cause is heard in a commissioner's report.

"7. This act shall be in force from its passage.

Commencement.

CHAPTER CXXXIX.

AN ACT amending and re-enacting chapter seventy-five of the Code concerning liens for purchase money and liens of mechanics, laborers and others.

Passed November 25, 1973

Be it enacted by the Legislature of West Virginia:

That chapter seventy-five of the Code be amended and re-enacted so as to read as follows:

Chapter 75 of the code amended and re-enacted.

Liens for purchase money to be reserved by deed.

1. If any person convey any real estate and the purchase money or any part thereof remain unpaid at the time of the conveyance, he shall not thereby have a lien for such unpaid purchase money, unless such lien is expressly reserved in the face of the conveyance.

Liens for purchase money of real estate must be reserved on face of conveyance.

Lien of mechanics and others.

Liens of mechanics for work on, and materials furnished for building, &c.

2. Every mechanic, builder, artisan, workman, laborer or other person who shall do or perform any work or labor upon, or furnish any material in the erection or construction of a house or other building on land, or in altering or repairing any house or other building or its appurtenances, by virtue of any contract with the owner thereof or his agents; shall have a lien for the value of such labor and material upon such house or other building and its appurtenances, and also upon the lots of land upon which the same is situated, and such owner shall not be obliged to pay for or on account of such house, building or appurtenances, any greater sum or amount than the price so stipulated and agreed to be paid therefor in and by such contract. And such lien shall have priority over any lien created by deed or otherwise on such house or other building and appurtenances and the lots on which the same are erected, subsequently to the time when such labor shall have been performed and material furnished. But there shall be no priority of lien as between the parties claiming under the provision of this section. But no lien shall be created in favor of any person furnishing material against the owner of the land unless the said material was furnished directly to him or unless he have notice previous to such owner having paid the contractor for building such house from the said party furnishing the said material that he claims a lien for the same.

Amount of such liens not to exceed the price stipulated in contract.

Priority of such lien.

No priority as to parties claiming under provisions of this act.

When lien may be created against the owner of land.

To preserve lien party must file within 30 days an account of the amount due him.

What must be stated in account.

3. Such lien shall be discharged unless the person desiring to avail himself thereof within thirty days from the time he ceases to labor on or furnish material for such building and appurtenances, file with the clerk of the county court in which the house or other building is situated, a just and true account of the amount due him, after allowing all credits together with a description of the property intended to be recovered by the lien sufficiently accurate for identi-

fication with the name of the owner or owners of the property, if known, which account shall be subscribed and sworn to by the person claiming the lien, or some one in his behalf.

Account must be verified.

It shall be the duty of the clerk of the county court in which the property is situated to enter every such account in a book by him to be kept for that purpose to be called the "Mechanics' Lien Record," which shall be properly indexed, and in which he shall state the names of the parties, the amount and character of the claim, and when filed, and the description of the property to be charged by said lien, for which service he shall receive fifty cents to be paid by the person claiming the lien.

And received by clerk in a book to be kept for that purpose.

Book to be indexed. What to be stated.

Fee of clerk therefor.

5. Any person, who in pursuance of an agreement with any such contractor shall, in conformity with the terms of the contract with such owner or agents do or perform labor, or work or furnish any material in the erection or construction of a house or other building in this state, may give written notice to the owner of the building, or his agents, that the contractor is indebted to him in a certain sum for material furnished or labor done upon the owner's house or other building, giving the particulars thereof and an affidavit that the same is correct, and such owner or his agents, shall, if there be unpaid by the owner to the contractor a sum sufficient to pay the amount of such claim, it shall be paid by the owner, but if there be not in his hands a sufficient sum to pay all of the claim, he shall only pay the the amount remaining in his hands at the time he received notice of such claim.

Sub contractor must give written notice to owner of the building to secure his lien.

What notice must state. Must be verified.

6. When the owner fails to perform his part of the contract and by reason thereof the other party, without his own default is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed in proportion to the price stipulated for the whole.

When contractor entitled to compensation for part performance of contract.

**Enforcement of
Lien How.**

7. Any person having a lien, or by virtue of this chapter, may enforce the same by filing a bill in chancery in the circuit or county court of the county in which the house or other building is situated, in which he shall make all other persons having similar liens thereon, parties; and any other person acquiring such lien before a decree shall be pronounced in said suit, may, at his request be made a defendant therein, and recover his claim in the same manner as if he had been made a defendant at the commencement of the suit; should the party bringing the suit from any cause fail to establish his claim, the suit shall not for that cause be dismissed, but it may be prosecuted by any other party thereto having such lien, in the same manner as if it had been commenced by him.

**If party bringing
suit fail to estab-
lish his claim, it
may be prosecuted
by any other party
having such lien.**

**When lien dis-
charged if suit not
commenced.**

8. Unless a suit to enforce the lien is commenced within six months after the person desiring to avail himself thereof, shall have filed his account in the clerk's office of the county court as hereinbefore provided, such lien shall be discharged; but a suit commenced by any person having such lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a like lien on the same property.

**Suit commenced by
one party inures to
the benefit of all
having liens.**

**If lien be estab-
lished, court to or-
der sale of property**

9. If the lien is established in favor of any of the creditors whose claims are presented in such suit, the court shall order a sale of the property in which the lien is established, or so much thereof as may be sufficient to satisfy such claim or claims in like manner as in other suits in chancery.

**Provisions of act
applicable to cor-
porations.**

10. This act shall apply, as well to corporations of every kind and character, as to individuals.

**When and how
clerk to enter a
discharge of such
lien.**

"When a debt secured by such lien is fully paid at any time after such creditor shall have filed his account in the office of the clerk, such creditor shall cause the clerk to enter a discharge of such lien in the margin of the book in which such account is entered,

and immediately opposite thereto, or shall execute a release thereof, which may be recorded in the book in which such account is entered.

12. This act shall be in force from its passage.

Commencement.

CHAPTER CXL.

AN ACT requiring the clerk of the supreme court of appeals and clerks of the circuit and county courts to report annually to the auditor, the number of suits brought in such courts, the number of days of the session, and the business transacted therein; and requiring the auditor to condense the same, and make it part of his annual report to the legislature.

Approved December 2, 1873.

Be it enacted by the Legislature of West Virginia :

1. That it shall be the duty of the clerk of the supreme court of appeals, and clerks of the circuit and county court on or before the first day of — in each year, to report to the auditor the number of suits commenced, pending and decided in their respective courts, and the number of days the courts were in session, and the average number of hours of each day's session; and the clerks of the county courts shall moreover include in their reports, the amount of debts or claims against the county levied for, during the year; showing separately, the amount levied for county, jury, court, school, road, salary of county officers, election and other purposes; and the per centum of each on the taxable property of the county during the preceding calendar year.

Clerk of court of appeals and clerks of county and circuit courts to make annual report to Auditor. When.

*Revised 1877
p. 126.*

What Reports to contain.

2. Any clerk failing to discharge the duties required of him by the preceding section shall forfeit one hundred dollars.

Penalty of failure.

Duty of the Auditor in relation thereto.

3. It shall be the duty of the auditor to furnish said clerks, forms for such reports and to condense the matters contained therein, and make them part of his annual report to the legislature.

Commencement.

4. This act shall be in force from its passage.

CHAPTER CXLI.

AN ACT authorizing municipal corporations to issue bonds.

Approved December 2, 1873.

Be it enacted by the Legislature of West Virginia :

Corporations authorized to issue and sell bonds.

1. All municipal corporations for the government of cities, towns and villages in this state, are hereby authorized to issue their bonds and to sell the same : Provided, That no such corporation shall by such issue and sale of bonds, cause the aggregate of its debt of every kind whatsoever, to exceed five per centum on the value of taxable property therein, which value shall be ascertained by the last assessment for state and county taxes previous to the issue of such bonds ; nor shall they make such issue and sale, without at the same time providing for the collection of a direct annual tax, sufficient to pay annually the interest on such debt, and the principal thereof within and not exceeding thirty-four years. But no city, town, or village shall ever impose or exact from the inhabitants thereof, a greater amount annually than the following rates, to-wit:

Aggregate of debt not to exceed 5 per centum on value of taxable property.

How value of property to be ascertained.

Interest on debt to be paid annually. Principal within and not exceeding 34 years.

Rates of taxation.

In and for a city containing a population more than 20,000 inhabitants.

FIRST. If it be in and for a city containing a population of more than twenty thousand inhabitants, the power of taxation shall not exceed two per cent. on the assessed value of property for state purposes, beyond a tax for railroad purposes, which may be imposed for that object, not exceeding three per cent. of such value.

SECOND. If it be in a city, town or village, containing a population of more than ten thousand inhabitants, and less than twenty thousand inhabitants, the rate shall not exceed one dollar and fifty cents, on every one hundred dollars value of property ascertained by the last assessment for state and county purposes.

In a city, &c., containing more than ten and less than twenty thousand inhabitants.

THIRD. If it be in a city, town or village, containing a population of more than three thousand inhabitants, and less than ten thousand inhabitants, the tax shall not exceed one dollar and twenty-five cents on every one hundred dollars value, as ascertained by the last assessment for state and county purposes.

In a city &c., containing a population of more than three and less than ten thousand inhabitants.

FOURTH. If it be in a city, town or village, containing a population of less than three thousand inhabitants, the tax shall not exceed fifty cents on every one hundred dollars value of property therein as ascertained by the last assessment for state and county purposes.

In a city, &c., containing a population of less than three thousand inhabitants.

The foregoing rates may be augmented not exceeding sixty per cent of the rates here provided, if submitted to a vote of the inhabitants of any such city, town or village, and approved by three-fifths of the qualified voters therein voting on the question: Every city, town and village shall be authorized to impose taxation on every inhabitant thereof to the extent of the value of his property therein. Such taxes shall be uniform with respect to persons and property within their jurisdiction, and shall only be levied on such property, real and personal, and mixed, and on capital, on which the state imposes a tax, and on licenses; but no special tax shall ever be imposed except the special tax be on such subject as the state imposes a license tax for the exercise of a privilege. Every city, town and village by its corporate authorities, in the exercise of its police force and fiscal affairs, may impose a license tax for any privilege for the exercise of which the state

Increase of taxation.

What per cent.

To be submitted to a vote. Three-fifths to approve.

Taxation to be imposed according to value of property.

To be uniform.

On what property levied.

Special tax; on what subject imposed.

License tax; how and on what privilege imposed.

For the right to tax and enforce the same, and to enforce police regulations.

Jurisdiction is extended one mile beyond corporate limits.

How such taxes may be assessed, collected and accounted for.

Authority of council as to taxation within one mile of corporate limits, to extend only to the imposition of a license tax, and to enforce payment thereof

To authorize the issuing of bonds, all questions connected therewith must be submitted to the qualified voters, and receive a three-fifth vote

Council to adopt an ordinance when deemed expedient to issue bonds.

What ordinance must specify.

Duty of mayor or chief officer.

Proclamation, what to contain.

Is publication.

imposes a license tax, and for the right to tax such privilege and for the purpose of enforcing the same, and such police regulations as may be prescribed for such city, town or village, the jurisdiction of every city, town or village shall extend one mile beyond the corporate limits of any such city, town or village as prescribed by the act of its incorporation. All such taxes on such property and capital may be assessed and collected by such council in such manner, and shall be accounted for at such time or times as may be prescribed by the council of any such city, town or village. But no such tax on any such property or capital outside of said corporation limits and within said mile, shall be imposed by any such council, and the power of taxation outside of said limits and within said line, shall only extend to the imposition of a license tax on such subjects as the state imposes a license tax, and the power of enforcing the payment thereof.

2. No bonds shall be issued by any such corporation under this law, unless all questions connected with the same shall have been first submitted to the qualified voters of such corporation, and have received three-fifths of all the votes cast for and against the same.

3. When the council of any city or the corporate authorities of any city, town or village, shall deem it expedient to issue such bonds, an ordinance, specifying the purpose and amount for which such bonds are to be issued, shall be adopted by them in regular meeting, and it shall then be the duty of the mayor, or where there is no mayor, of the chief officers of such city, town or village, to issue a proclamation reciting said ordinance, and appointing a day at which an election shall be held by the qualified voters of such city, town or village, to decide whether they will ratify or reject said ordinance. Such proclamation shall be published in all the newspapers published in such city,

town or village at least once a week for two weeks previous to the day of the election, and where there is no such newspaper, notice of such proclamation shall be given by such means as the town authorities may consider best calculated to afford all voters an opportunity to learn its contents.

If not published,
what then.

4. Such election shall be conducted in all things according to the laws then in force governing elections, and the provisions of the charter of the city, town or village in which they are held. All persons qualified to vote at other municipal elections in such city, town or village, and no others, shall vote at such elections as are herein authorized.

Election : how
conducted.

Who may vote.

5. The person voting for the ratification of any such ordinance, shall have written or printed upon his ballot the words "For Ratification," and the person voting against ratification, shall have written or printed upon his ballot the words "For Rejection."

Ballot : words to
be written or
printed on.

6. Only one ordinance made in pursuance of the third section of this act, shall be submitted at any election ; but that ordinance may specify more than one purpose for which said bonds are to be issued : Provided, however, that the amount to be appropriated to each purpose shall also be specified therein.

Only one ordinance
shall be submitted.

What it may
specify.

Proviso.

7. The proclamation provided for in the third section of this act, shall specify the aggregate amount of indebtedness, issued and authorized, of such city, town or village, existing at the date of the proclamation.

Proclamation :
what it must
specify.

8. Bonds issued under this law shall be of the denomination of one hundred dollars, and of multiples thereof. They shall be payable not less than ten, nor more than thirty-four years after date. They shall bear not more than ten per cent interest, and the interest shall be payable annually. And no debt shall be hereafter created by any city, town or village, except the debt designated and provided for by this act as the bonded debt.

Bonds, denomina-
tion of.

When payable.

What in it
bear.

When payable.

No debt to be crea-
ted, except the
bonded debt.

Selling or issuing bonds or other evidence of indebtedness.

Officers prevented from.

Bonds to be sold publicly, to highest bidder in writing.

Terms.

Proceeds; how used.

Sale to be advertised.

Sinking fund.

Liability of treasurer therefor.

How applied or invested.

Penalty for violating provisions of this act.

Bonds to be sold at par value.

Acts repealed

Commencement.

9. It shall be unlawful for the officers of any city, town or village, to issue or sell directly or indirectly any bond, or to issue any other evidence of indebtedness to be used in payment for work or materials to be furnished, but all such bonds shall be publicly sold upon the terms proscribed by this act, to the highest bidder in writing, to be approved by the officers conducting the sale, for cash, or its equivalent in bonds previously issued by such city, town or village, and the money arising therefrom shall be used as by this act authorized; and before any sale of such bonds, said sale shall be advertised in some convenient newspaper at least four weeks previous to such sale.

10. The treasurer and his securities shall be liable for the sinking fund, and the interest heretofore levied, or that hereafter may be levied for a sinking fund in any city, town or village, and to pay interest on the bonded debt; and it shall only be applied to the purposes for which it was levied, or for investment in United States bonds, or the bonds of the city, town or village, as the council may direct; to be used for the payment of principal and interest of any bonded debt of such city, town or village. And any officer violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars for each offense; and in addition thereto, shall be imprisoned in the county or city jail, not less than ten days nor more than six months for each offense.

11. Bonds shall be sold at not less than their par value.

12. All acts and parts of acts inconsistent with this act are hereby repealed.

13. This act shall be in force from, and after the passage thereof.

CHAPTER CXLII.

AN ACT to amend and re-enact chapter one hundred and twenty-four of the acts of 1872, entitled, "An act to locate a branch state normal school in Concord, in the county of Mercer," passed February 28, 1872.

Passed December 2, 1873.

Be it enacted by the Legislature of West Virginia :

That chapter one hundred and twenty-four of the acts of 1872, entitled, "An act to locate a branch state normal school in Concord, in the county of Mercer," be amended and re-enacted so as to read as follows :

1. That a branch state normal school be established in Concord, in the county of Mercer: Provided, That the building recently erected in said town for a court house and jail, and the land on which the same is situated, together with not less than five acres of land adjacent thereto, shall for the purposes of said school, be conveyed, within six months from the passage of this act, by the person or persons having title to the same in fee, for the purposes aforesaid: And, Provided further, That the said buildings shall be fitted up and furnished for the convenience of such school, free of charge to the state.

2. If it be not practicable to comply with the conditions imposed by the first section, then and in that case, another lot of equal size adjoining said town may be provided, and the title thereof secured to the state in like manner as provided for in respect to the court house and jail lot, in the first section, upon which may be erected the necessary buildings for said school, properly fitted up and furnished.

3. Should neither of said lots be procured and the title thereof be secured to the state as hereinbefore

Conditions to be
complied with.

provided and proper building erected thereon and fitted up and furnished within twelve months from the passage of this act, then, and in that case, the said normal school is transferred to the town of Princeton, in said county of Mercer: Provided, That a suitable lot shall be procured there for the purpose, containing not less than five acres, and the title thereof secured to the state in like manner as prescribed in the first section of this act, and suitable buildings for the purpose erected, or be in process of erection, thereon within eighteen months from the passage of this act, free of charge to the state.

School to be under
control of the stat
board of regents.

4. Said school shall be under the jurisdiction and control of the regents of the state normal schools of the state, in the same manner and to the same extent of other state normal schools.

When school to
be organized.

5. When the regents shall ascertain that the conveyance required by this act has been made, as heretofore provided for, and shall have sufficient assurance that said buildings will be completed in a reasonable time and sufficient building accommodations shall be furnished for temporary purposes, it shall be the duty of said board of regents to proceed to organize said school.

CHAPTER CXLIII.

AN ACT to amend and re-enact chapter eighty-one of the code, concerning masters and apprentices.

Approved December 2, 1873.

Be it enacted by the Legislature of West Virginia :

How minors are
bound out; by his
father or guardian.
When by mother
with consent of
court.

1. Any minor may be bound as an apprentice by his father, or if none, by his guardian, or if neither father nor guardian, by his mother, with the consent, entered of record, of the county court of the county in

which the minor resides; or without such consent, if the minor, being fourteen years of age, agree in writing to be so bound.

2. The county court of a county may bind out as an apprentice any minor who is found begging in such county, or is likely to become chargeable thereto.

When by county court.

3. The term of every such apprenticeship shall be until the apprentice attains the age of twenty-one years, if a boy, or eighteen years, if a girl.

Term of apprenticeship.

4. The writing by which any minor is bound as an apprentice shall specify his age, and what trade, art or business he is to be taught. The master, whether it is expressly provided therein or not, shall be bound to teach him the same and also reading, writing and common arithmetic.

Writing to bind apprentices.

What it must specify.

What the master must teach him.

5. When a county court makes an order allowing a minor to be bound as an apprentice it shall direct whether the master, besides maintaining the apprentice and so teaching him, shall pay anything for his services, and if anything, how much, and for which year or years. The writing by which the minor is bound shall bind the master to pay what may be so directed. For such payment bond may be taken by the county court binding such minor.

Order of court, allowing minors to be bound.

Nature of such order.

Bond to be taken

6. The bond so taken from the master shall, within six months from the date of the order requiring it, be filed in the office of the clerk of the county court in which the order is made. Unless so filed, the master shall not be entitled to the services of the apprentice.

When and where filed.

If not filed, master not entitled to services of apprentice.

7. Such writing may, with the approbation of the said county court, and on such terms as the court may prescribe, be transferred by the master, or within three months of his death, by his personal representative. The assignee thereof shall succeed to the master's rights and obligations for the future, and shall give bond if required by the court.

When and how writing assigned.

Rights of assignee.

Of the money the master is to pay.

Money to be paid
by the master;
When and to whom

Direction for pay-
ment may be
changed.

8. The money which the master is to pay for any year except the last, shall, at the end of the year for which it is payable, be paid to the father of the minor, or to the mother, or part to each, as the court may direct; or it may be reserved, to be paid to the apprentice at the end of his term, with interest. Such directions may be changed from time to time, on the motion of the overseers of the poor of the county, or of the father, mother, or apprentice, on proof of notice of such motion having been given to the adverse party.

Money for last year
to be paid to ap-
prentice.

9. The money which the master is to pay for the last year shall be paid at the end thereof to the apprentice.

Proceedings to
recover money.

10. Any money to be paid under either of the two preceding sections may be recovered from those liable therefor, on the motion of those entitled thereto, or by suit. Any such motion may be in the circuit or county court of the county in which the bond of the master is filed.

Controversies between masters and apprentices.

Court to determine
complaints of
apprentice or mas-
ter, after reasonable
notice.

11. Such court during the term of apprenticeship, may receive the complaint of such apprentice, or any person in his behalf, against the master, for underserved or excessive correction, want of instruction, insufficient allowance of food, raiment, or lodging, or non-payment of what was directed to be paid; the complaint of a master against his apprentice for desertion, or other misconduct; and after reasonable notice of the complaint to the party against whom it is made, may determine the same in a summary way, making such order as the case may require.

Apprentice to live;
in county where
bound.

12. No apprentice shall live out of the county in which the order binding him is made, without leave of the court of the said county. Whenever such leave

is given, a copy of the order giving it shall be forthwith filed in the office of the clerk of the county court of the county in which the residence is to be, and thereafter the county court of that county may hear and determine any complaint against the said master or apprentice, as might have been done by the county court giving such leave, before the same was given. If, without such leave, an apprentice be removed by his master or with his master's knowledge, out of the first mentioned county, and remain thereout more than one month, the obligation of the apprentice to serve such master shall be only during the pleasure of the apprentice.

Court may order otherwise. Where such order to be filed.

Court of county where residence is to be to determine complaints.

Effect of removal of apprentice out of county without leave.

13. If any apprentice, who was bound as such beyond the limits of this state, be brought or come within the same, the county court of the county in which he may be, may hear and determine, in a summary way, any complaint of him or his master, and make such order in the matter as may be right.

What court hears complaints when apprentice is bound beyond the limits of this State, and returns.

Apprentices who desert their service.

14. If any apprentice, bound in this state, desert the service of his master, and any person shall knowingly conceal or harbor such apprentice, he shall pay such master three dollars for each day he shall so conceal or harbor him, in addition to the damages sustained by the master.

Penalty for harboring apprentice who deserts his master.

15. This act shall take effect from its passage.

Commencement.

CHAPTER CXLIV.

AN ACT authorizing the appointment of commissioners to convey lands to the heirs of Cabell Taverner, sold as delinquent and forfeited.

Approved December 2, 1873.

Be it enacted by the Legislature of West Virginia :

Circuit court of
Lewis county,
authorized to ap-
point a commis-
sioner to collect the
money unpaid, for
certain lands, and
to convey said
lands to the heirs of
Cabell Tavener.

That the circuit court for the county of Lewis, ap-
point a commissioner in the room of Minter Bailey,
formerly commissioner of forfeited and delinquent
lands, for said county of Lewis, but now deceased, to
collect the money that may remain unpaid upon cer-
tain lands sold by said commissioner, in his lifetime,
to Cabell Tavener, also now deceased, and to make to
the heirs of said Tavener, a deed for said lands, in
pursuance of the laws under which said sale was made,
and that said commissioner pay the money due to the
state of West Virginia for said land into the treasury
of this state.

Money to be paid
into the treasury.

CHAPTER CXLV.

✓ AN ACT to amend and re-enact sections one and six
of chapter one hundred and nineteen of the code of
West Virginia, concerning attorneys at law.

Approved December 4, 1873.

Be it enacted by the Legislature of West Virginia :

Code amended and
re-enacted.

1. That sections one and six of chapter one hundred
and nineteen of the code of West Virginia concerning
attorneys at law, be and the same is hereby amended
and re-enacted so as to read as follows :

License to practice
law.
By whom given.

“ 1. Any three judges composed either in part or
in whole of the supreme court of appeals or of the
circuit courts of this state may grant a license in
writing to practice law in the courts thereof to any
person who shall, on examination, be duly qualified,
and who shall produce a certificate of the county
court of the county where he has resided one year

Upon what certifi-
cate.

next preceding, that he is a person of honest demeanor, and is a person over twenty-one years of age."

"6. If the supreme court of appeals or any circuit or county court observe any mal-practice therein by any attorney, or if complaint be made to any of said courts of mal-practice by any attorney therein, such court shall order the attorney to be summoned to show cause why his license shall not be suspended or amended, and upon the return of the summons executed, if the attorney appear and deny the charge of mal-practice, a jury shall be empannelled to try the same; and if the attorney be found guilty, or if he fail to appear and deny the charge, the court may either suspend or annul the license of such attorney as in its judgment shall seem right. And whenever a judgment or decree shall be standing or rendered in either of said courts against an attorney for money by him collected as such, it shall be the duty of such court to suspend the license of such attorney until such judgment or decree shall be satisfied."

How licenses may be suspended or annulled for mal-practice, &c.

2. All acts or parts of acts inconsistent with this act, are hereby repealed.

Inconsistent acts repealed.

3. This act shall take effect and be in force from and after its passage.

Commencement.

CHAPTER CXLVI.

AN ACT authorizing the female seminary at Union, in the county of Monroe, to confer literary degrees and award diplomas.

Approved December 6, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the principal, or board of instruction, of the female seminary at Union, in the county of Mon-

Authorized to confer literary degrees and award diplomas.

roe, West Virginia, are hereby authorized and empowered to confer literary degrees upon, and award such diplomas to the graduates and pupils of said seminary, as complete the course of study prescribed therein, as are usually conferred by institutions of a like character for the education of females.

Commencement.

2. This act shall be in force from its passage.

CHAPTER CXLVII.

AN ACT for the relief of William Workman, of Boone county.

Approved December 8, 1873.

Be it enacted by the Legislature of West Virginia:

1. That there shall be appropriated and paid out of the funds in the treasury, designed for the payment of militia claims, the sum of fifty-two dollars to reimburse the said William Workman for the payment of that sum to James Payne, who was a private in Captain William Walker's company of State troops, of Wyoming county, in the State of West Virginia.

Fifty-two dollars appropriated out of the funds for the payment of militia claims to reimburse Wm. Workman.

CHAPTER CXLVIII.

✓ AN ACT amending and re-enacting chapter sixty of the Code, concerning enclosures and certain trespasses.

Approved December 8, 1873.

Be it enacted by the Legislature of West Virginia:

That chapter sixty of the Code be amended and re-enacted so as to read as follows:

CHAPTER LX.

Of enclosures and certain trespasses—of lawful fences.

1. Every fence of the height and description hereinafter mentioned shall be deemed a lawful fence as to any stock named in the third section, which could not creep through the same, that is to say: Lawful fences.

I. If built of common rails, known as the worm fence, four and one-half feet high. Height of.

II. If built with posts and rails, or posts and plank or pickets, four feet;

III. If built with stone, two feet wide at the base, three and one-half feet high;

IV. If a hedge fence, four feet high.

If any such fence be built upon a mound, the same from the bottom of the ditch shall be included in estimating the height of the fence.

2. All rivers and streams, and parts thereof, within this State, which are lawful fences at the time this act takes effect, under existing laws, shall continue such until otherwise ordered by the county court of the county. And hereafter the county court of any county may declare any river or stream in its county, or which constitutes a boundary line thereof, a lawful fence, for such places, and for such distance as it may deem proper, and may discontinue any such river or stream, or any part thereof as a lawful fence, which has already been or shall be declared to be such. What rivers and streams are lawful fences.

3. If any horses, mules, cattle, sheep, hogs, or goats, shall enter into any grounds enclosed by a lawful fence, the owner or manager of any such animal shall be liable to the owner of such grounds for any damages he may sustain thereby; and for every succeeding trespass by such animal, the owner thereof shall be liable for double damages. And after having given at least five days' notice to the owner or manager of such animal of the fact of two previous County court may declare streams lawful fences and discontinue them as such.

Trespasses by animals.

Damages therefor.

When and how owner forfeits to animal trespassing.

trespasses, the owner or occupier of such grounds shall be entitled to such animal, if to be found again trespassing on said grounds.

Division fences.

When owners of adjoining lands to build a just proportion of.

4. Where two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, except the owner or owners of either of the adjoining lands shall choose to let such land lie open.

When person who has chosen to let his land lie open afterwards encloses them, he must refund a fair proportion of value of division fences.

5. Where a person shall have chosen to let his land lie open, if he shall afterwards inclose it, he shall refund to the owner of the adjoining land, a just proportion of the value at that time of any division fence that shall have been made by such adjoining owner.

Disputes in such cases.

How determined.

6. The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be built by him, in case of his inclosing his land, shall be determined, in case the parties cannot agree, by three persons to be agreed upon by them; and if they cannot so agree, by three disinterested persons to be appointed by the county court, on motion of either party, after reasonable notice to the other.

Amount being ascertained. How recovered.

7. If dispute arise between the owners of adjoining lands, concerning the proportion or particular part of a fence to be maintained or made by either of them, or the amount to be paid by one party to the other for any fence already built, or maintained, such dispute shall be settled by three persons to be selected as provided in the preceding section; and the amount so ascertained to be paid by one party to the other, may be recovered in any court having jurisdiction in the case.

Effect of decision in such cases.

8. The persons so selected shall examine the premises and hear the proofs and allegations of the parties, and the decision of any two of them shall be final, and bind the parties to such dispute and all parties holding or claiming under them.

9. The decision made under either of the three preceding sections shall be reduced to writing and shall contain a description of the fence to be built or kept in repair, or both, and of the proportion to be maintained by each party, which decision shall be forthwith filed in the office of the clerk of the county court, and be recorded in a book to be kept by him for that purpose.

Decision must be reduced to writing. What to contain.

Where filed.

10. Any person desiring to build such division fence, may give notice in writing to the proprietor of any adjoining lands, or to his agent, of his intention to build such fence, and requiring him to build his just proportion thereof. The party so served with such notice, shall within ten days thereafter, in case he elects to let his lands lie open, serve notice in writing on the party desiring to build said fence, of such election, and upon his failure to do so, he shall be liable to the party building such division fence, for his just proportion of the expense thereof, in case he fails to build the same.

Notice of intention to build division fence.

Duty of party served with such notice.

When liable to pay a just proportion of cost of division fence.

11. In any controversy in which the sufficiency of a fence under the provisions of this chapter shall come in question, it shall be presumed that the same was at the time to which such controversy relates, a lawful fence and in good condition and repair, unless the contrary be proven.

In what controversy fence deemed a lawful one.

CHAPTER CXLIX.

AN ACT to amend and re-enact chapter eighty-two two of the code, concerning guardians and wards.

Passed December 9, 1873.

Be it enacted by the Legislature of West Virginia:

1. Every father, or mother, if she be a widow or

Testamentary guardians, appointment of.

unmarried woman, may, by last will and testament, appoint a guardian for his or her child, born or to be born, and for such time during its infancy as he or she shall direct.

When appointment to be void.

2. If any person so appointed shall renounce the trust, or fail to appear before the circuit or county court before whom the said will shall be proved, within six months after the probate thereof, and declare his acceptance of the trust, and give bond as herein provided, such appointment shall be void.

When guardian may be appointed by court.

3. The circuit or county court of any county in which any minor resides, or, if he be a resident out of the state, in which he has any estate, may appoint a guardian for him, unless he have a guardian appointed as aforesaid by his father or mother.

How and when minor may nominate his own guardian.

4. If the minor be under the age of fourteen years, the circuit or county court may appoint his guardian; if he is above that age he may, in the presence of the court, or in writing acknowledged before a justice, nominate his own guardian, who, if approved by the court, shall be appointed accordingly, and if the guardian nominated by such minor shall not be appointed by the court, or if the minor shall reside without the state, or if, after being summoned, he shall neglect to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor was under the age of fourteen years.

When court may nominate guardian for minor over 14 years of age.

Bond of guardian.

5. Every guardian, unless in the case of a testamentary guardian the will otherwise directs, and the court in which the will is recorded deems unnecessary for the safety of the ward, shall give bond to be approved by the court by whom he is appointed, or before whom he accepts the trust, in such penalty as shall be prescribed by the court.

Curator, when court to appoint.

6. Until a guardian shall have given bond the court may, from time to time, appoint a curator, who shall give bond as aforesaid, and, during the continuance of

his trust have all the powers, and perform all the duties of a guardian, and be responsible in the same way; but the court in its discretion may dispense with his giving security.

His powers and duties. Court may dispense with bond.

7. Every guardian who shall be appointed as aforesaid, and give bond when it is required, shall have the custody of his ward, and the possession, care and management of his estate, real and personal, and out of the proceeds of such estate shall provide for his maintenance and education; but the father of the minor, if living and in the case of his death, the mother, if fit for the trust, shall be entitled to the custody of the person of the minor, and to the care of his education. And unless the guardian shall sooner die, be removed or resign his trust, (and the court that appointed him may allow him to resign,) he shall continue in office until the minor shall attain the age of twenty one years, or, in the case of a testamentary guardianship, until the termination of the period limited therefor. At the expiration of his trust, he shall deliver and pay all the estate and money in his hands, or with which he is chargeable, to those entitled thereto.

Guardian to have custody of ward and estate.

Provide as to custody of person.

Continuance of trust.

To Account for estate at end of trust.

8. No disbursements shall be allowed to any guardian, where the deed or will under which the estate is derived, does not authorize it, beyond the annual income of the ward's estate, except in the following cases:

Disbursements allowed guardians. Not to be beyond annual income.

FIRST. When the ward is of such tender years or infirm health that he cannot be bound out as an apprentice, or no suitable person will take him as such; or,

When may be beyond income.

SECONDLY. When, although old enough to be bound out as an apprentice, it shall be deemed best for the ward that the principal of his personal estate, or a portion thereof, should be applied toward his education or maintenance, and the court before which the accounts of the guardian may be settled shall be satis-

fied that such expenditure was actually made, and was judicious and proper, and shall allow the same.

Property sold
therefor.

9. When any such disbursements shall be so allowed, the court may, if necessary, order the sale of such portion of the personal estate of the ward as may be necessary to pay the balance of expenditures over and above the income of his estate, and may sanction any sale previously made, which, if it had not been so made, the court, at the time allowing such disbursements, would have ordered; but neither the ward personally, nor his real estate, shall be liable for such disbursements.

Ward not personally
liable, nor his
real estate for such
disbursements.

When guardian to
pay interest.

10. If any balance, whether of profits received or estimated, or of interest or principal, be due by any guardian, or other person acting as guardian, at the end of any year, which ought to be invested or loaned out within a reasonable time for the benefit of the ward; and the same remain in the hands of such guardian or other person, he shall be charged with interest thereon from the end of the year in which such balance arose, and so on toties quoties during the continuance of the trust.

Guardian may
demand compound
interest for ward.

11. Hereafter any person acting as guardian shall have the right to demand and recover of all obligors in bonds, payable to him as guardian, and held by him for the benefit of his ward, not only the principal sum due, with interest thereon after the rate prescribed by law, but also when the interest on the principal sum is not paid punctually at the end of each year, to demand and recover interest upon the interest so due and unpaid.

Time allowed to
invest funds.

12. Whenever a guardian shall collect any principal or interest belonging to his ward, he shall have thirty days to invest or loan the same, and shall not be charged with interest thereon until the expiration of said time, unless he shall have made the investment previous thereto, in which case he shall be

charged with interest from the time the investment or loan was made.

13. The circuit and county courts in chancery may Power of chancery courts as to guardians. hear and determine all matters between guardians and their wards, require settlements of the guardianship accounts, remove any guardian for neglect or breach of trust, and appoint, or order another to be appointed in his stead and make any orders for the custody and tuition of an infant, and the management and preservation of his estate.

14. Any minor, entitled to sue, may do so by his next friend. How minors may sue.

15. This act shall take effect from its passage. Commencement.

CHAPTER CL.

AN ACT to amend and re-enact chapter eighty of the code, concerning the maintenance of illegitimate children.

Approved December 9, 1873.

Be it enacted by the Legislature of West Virginia :

1. Any unmarried woman may go before a justice of the peace of the county in which she has resided for the preceding year, and accuse any person of being the father of a bastard child of which she has been delivered. The said justice shall examine her under oath and reduce her examination to writing and sign it. On such examination unless the child be three years old or upwards, the justice shall issue a warrant, directed to the sheriff, or a constable, in any county where the accused may be, requiring him to be apprehended and taken before a justice of the county in which he may be found ; and it shall be the Illegitimate children. Proceedings against person accused of being the father.

Recognizance to be given by accused

duty of such justice to require the accused to enter into a recognizance, with one or more good securities, in a sum not less than one hundred dollars, nor more than five hundred dollars, conditioned for his appearance at the next term of the county court of the county in which such warrant issued, to answer said charge, and to abide by and perform the order of the court in relation thereto. If a married woman live separate and apart from her husband for the space of one year or more, and shall not at any time during such separation cohabit with her said husband she may, if she be delivered of a child at any time after the said one year, and while such separation continues, accuse any person, other than her husband, of being the father of such child, in like manner, and the same proceedings shall thereupon be had, as if she were an unmarried woman.

When such proceedings may be had in case of a married woman

Recognizance to continue in force if case continued.

2. Should the court continue the case at the first or any subsequent term, the recognizance shall continue in force until the final judgment, unless the accused, if a new recognizance be required, shall give the same or be committed to jail.

New recognizance may be required.

Proceedings may be in the name of the woman or the overseers of the poor.

3. After such accusation shall have been made, proceedings thereupon may be had either in the name of the woman or of the overseers of the poor of — county.

Plea of "not guilty"; proceedings thereon.

4. If the accused appear and plead "not guilty," the issue shall be tried by a jury, (if not waived by the parties) and if he be found guilty the court shall order him to pay to the overseers of the poor of the county, for the maintenance of the child, such sums as it may deem proper, for each year, until such time as the court may appoint, unless it sooner die; and shall order the father to give a bond in such penalty, and with such sureties, as it may deem sufficient for the performance of said order; and shall order him to jail until such bond be given in the court, or filed in the clerk's office, or the woman and the said over.

Accused to give bond.

To be imprisoned if bond not given.

seers of the poor consent to his discharge, or he be otherwise legally discharged; and if found not guilty by the jury, he shall be discharged and shall recover his costs against the said overseers of the poor.

If found not guilty to be discharged and recover costs.

5. As often as the condition of such bond is broken, a motion may be made before the county court of the county, and judgment may be given in the name of the said overseers of the poor against the said father and his sureties, and against his and their personal representatives, for the money due, with lawful interest thereon from the time or times when the same ought to have been paid.

Proceedings when conditions of bond are broken.

6. The prosecuting attorney for the county shall appear on behalf of the woman or of the overseers of the poor, in every case under this chapter; and if judgment be given against the father, there shall be included in the costs a fee of ten dollars to said attorney.

Duty of prosecuting attorney in such cases.

His fee.

7. At the hearing or trial, both the woman and the accused shall be competent witnesses to testify therein.

Parties competent as witnesses.

8. This act shall be in force from its passage.

Commencement.

CHAPTER CLI.

AN ACT requiring certain sales to be advertised in a newspaper.

Passed December 10, 1873.

Be it enacted by the Legislature of West Virginia :

1. That whenever a court shall hereafter decree the sale of real estate, if it appear to the court that such real estate is of the value of five hundred dollars or more it shall prescribe in the decree that such sale

Certain sales of real estate to be advertised

Where to be advertised.

shall be advertised in a newspaper, by the commissioner or person appointed to make the sale. It shall always be advertised in a newspaper published in the county, if one be published therein, where the real estate to be sold is situated.

What advertisement must state.

In the advertisement the commissioners shall state the time, terms and place of sale, together with a description of the property to be sold; Provided, however, That nothing herein shall be construed to limit the power of the court to direct sales of lands to be advertised in newspapers where the value may be less than five hundred dollars, or where no newspaper is published in the county where the real estate to be sold is situated, then in some newspaper having a general circulation in the county: And provided, further, That not more than five dollars shall be paid for any advertisement, that does not exceed two inches square of space, for the four successive insertions. If the newspaper published in the county refuse to do the work at this price then it shall be lawful to publish the same in any newspaper in the judicial circuit, and if no paper in the circuit will do the work at this price it shall be lawful to publish the same at the front door of the court house of the county, and three other public places near the land to be sold.

Provide as to sales of land of less value than \$500, and when no newspaper is published in the county where the land is situated.

Price to be paid for advertisement.

When it shall be lawful to post notice of sale at Court House, &c.

Lands delinquent for taxes to be advertised.

2. A list of all lands returned as delinquent for taxes shall be advertised by the sheriff for four weeks prior to the sale thereof in some newspaper in the county where such land is returned delinquent.

When and within what time sheriffs shall add as a part of expenses of sale an equal per centum on the taxes due, and for which the lands were sold, to pay for advertising returns of sales made, for eight weeks.

3. Within three months after the sale of land for taxes, by the several sheriffs of the state, if the lands or any tracts or parts of lands shall be bought by individuals, the sheriff making the sale shall add as part of the expenses of sale, an equal per centum on the taxes due and for which the lands were so sold as will be sufficient to pay the expenses of advertising the full return of all sales made to individuals, for the

period of eight weeks; and the said sheriff shall, within said three months, advertise the said full returns of such sales in some convenient newspaper, and shall always advertise in a newspaper published in the county, if one be published therein, and shall specify in such advertisement the time within which the original owner will be entitled to redeem, and beyond which the right will cease.

Sheriff to advertise full returns of such sales within three months.

What such advertisement must specify.

4. Any sheriff, or other officer proceeding to sell under a writ of fieri facias or venditioni exponas, if the property be of the value of five hundred dollars or more, shall advertise the sale for the time required by law, in a newspaper published in his county, if one be published therein, the cost of which advertisement shall not exceed the price prescribed in section one of this act.

Sales under certain writs to be advertised.

Cost of such advertisement.

5. This act shall be in force from its passage.

Commencement.

CHAPTER CLII.

AN ACT for the relief of persons prosecuted or sued for acts done according to the usages of civilized warfare, in the war between the Government of the United States and a part of the people thereof.

Passed December 10, 1873

Be it enacted by the Legislature of West Virginia :

1. That if any person who has heretofore been sued either by civil or criminal proceedings instituted against him for acts arising out of a participation in the late war between the Government of the United States and a part of the people thereof, or for such acts in confederation with others therein, in which he or they was sought to be rendered liable by suit or indictment, or other civil or criminal proceedings instituted or threatened, and in consequence thereof has entered

Compromised suits of persons prosecuted or sued for acts growing out of the late war.

Relief afforded in such cases.

into a compromise, by which he did pay any money or other valuable consideration, and by reason of such compromise a *nolle prosequi* has been entered, or said civil suit dismissed, or no suit brought on account of said compromise, or no criminal proceedings instituted in consequence thereof, and money or other thing paid on such compromise, or where evidences of debt or other obligations have been given under the belief that he was restrained in the justice of his defense and the equal privileges of a suitor, by the constitutional and statutory disabilities imposed upon him because he had participated in said war, and at the trial of said cause shall make oath to such belief, it shall thereupon be lawful, and it shall be the duty of the court upon an action being brought by said defendant or his personal representative, upon the law side of the circuit court, for money had and received for the use of the said party, to impanel a jury and try the case according to the principles of this chapter, and if the verdict of the jury be for the plaintiff, to give judgment for the amount of money so paid, or for the value of any property so paid, with attorney fees and other costs incurred, with interest upon the same from the time of said payment until paid, and his costs, with attorney fees, in this proceeding.

Duty of Court: to impanel a jury and try case according to principles of this act.

If verdict be for plaintiff: for what judgment to be given.

2. That in all cases where persons have paid money or other valuable considerations for the compromise of criminal proceedings either instituted or threatened for acts done according to the usages of civilized warfare in the war between the Government of the United States and a part of the people thereof, that the said parties shall, upon proof of said facts, in an action of assumpsit, recover back any money or the value of any other thing paid, with its interest, from the party receiving said money or other thing, whether he be a private person or officer, in any court of the county or before any justice according to their respective jurisdictions.

Where persons have paid money, &c., for the compromise of criminal proceedings, may recover same back with interest, in any court of the county or before any justice.

And where any contract has been entered into on account of said compromise, and the party sued thereon, he may plead the same in bar of a recovery. And the statute of limitation shall not apply to actions brought under this act. And in all such actions the plaintiff may declare generally for money had and received to the use of the plaintiff, but he shall file with his declaration a specification of account as near as may be of the time the money or other thing was paid, the amount of money or value of other things so paid.

When a person is sued on a compromise contract he may plead such contract in bar of a recovery.

Statute of limitations not to apply to actions under this act.

What plaintiff may declare and specify.

3. That in any action or suit heretofore brought, now pending, or which may hereafter be brought, before any justice, if it shall appear in a pending cause, or in a cause hereafter to be brought, by the warrant, or from any of the pleadings, or papers of the plaintiff in any such suit, that the action complained of, or the action of another for which he was held, or sought to be held liable, was done according to the usages of civilized warfare, in the prosecution of the war between the Government of the United States and a part of the people thereof, the justice, if it shall so appear, or be proved before him, shall, upon motion of the party or personal representative, dismiss the plaintiff's action at his costs. If the matter has been adjudicated before a justice, and a judgment shall have been rendered thereon by him, against the defendant, such defendant or his personal representative, may file a petition in the circuit or county court of the county wherein such judgment was rendered, for an appeal, which shall be granted as a matter of right, without regard to any limitation of time, or to the value of the matter in controversy. Such appeal shall be tried according to the principles contained in this act, and all such appeals shall be cognizable in the county court, and shall be then docketed and tried and shall not be dismissed without the consent of the defendant or appellant, or his personal representative. And if, upon the trial of any such appeal,

When Justice shall dismiss plaintiff's action at his costs.

Appeal from the judgment of justice, upon petition, shall be granted to defendant as a matter of right.

How such appeal tried, and where cognizable.

Not to be dismissed without consent of defendant, &c.

If judgment be for defendant, &c., what then.

How enforced.

If the judgment appealed from shall be found to have been erroneous; what then.

When court to give judgment of restitution.

How enforced.

Duty of court as to all matters not herein provided for.

When court may transfer appeal to county court of an adjoining county for trial.

Commencement.

the judgment shall be for the defendant or appellant, and all or any part of it shall have been paid, there shall be a judgment of restitution in favor of the defendant or appellant for the amount paid, with interest, which shall be enforced by execution or otherwise. And in case the judgment appealed from shall, upon the trial thereof, be found to have been erroneous, it shall be reversed, and the appellant shall recover his costs expended in the prosecution of such appeal, and the court shall render such judgment as the justice ought to have rendered, and the court shall also render judgment for the appellee for the amount ascertained to be due him, if any be so ascertained, and the costs expended before the justice, but shall allow to the appellant credit for any part thereof that he shall have paid, and if the appellant shall have paid, by reason of the rendition of the judgment appealed from, more than the amount due the appellee and the cost before the justice, there shall be a judgment of restitution for the same, which shall be enforced by execution or otherwise, and the said court, as to all matters not herein provided for, shall make such order or give such judgment as the very right of the case requires.

4. That if the appellant make oath that from local prejudice or other cause he believes that he cannot have justice done him, upon the trial of the appeal in the county in which such appeal may be pending, the court shall remove or transfer the appeal to the county court of an adjoining county, to be there docketed and tried.

5. This act shall be in force from its passage.

CHAPTER CLIII.

AN ACT to amend and re-enact section twelve of chapter one hundred and twenty-four of the code of

West Virginia, concerning process and the order of publication.

Passed December 13, 1873.

Be it enacted by the Legislature of West Virginia :

That section twelve of chapter one hundred and twenty-four of the code, is hereby amended and re-enacted, so as to read as follows :

"12. Every order of publication shall state briefly the object of the suit, petition or other proceeding, and shall require the defendant against whom it is entered, to appear within four weeks after the date of the first publication thereof, or the next rule day, (if the case be at rules,) and do what is necessary to protect his interests. It shall be published once a week for four successive weeks, in such newspaper as the plaintiff or his counsel may select, published in the county in which the order is made or directed, if one is so published, and if no newspaper be published in the county then in such newspaper published in the State, and having a circulation in said county as the plaintiff or his counsel may select, and if none be selected, then as the clerk may direct: Provided, That such order shall be deemed to have been duly published on the day of the fourth publication thereof. It shall also be posted at the front door of the court house of the county wherein the court is held, at least twenty days before judgment or decree is rendered."

Sec. 12 of chapter 124 of code amended and re-enacted.

Order of publication; what it must state.

How it must be published.

When order deemed duly published.

How posted.

CHAPTER CLIV.

AN ACT appropriating one thousand dollars for furnishing building, purchasing apparatus, and the improvement of the grounds of the Branch Normal

School at Glenville in the county of Gilmer, to be expended under the direction of the Executive Committee.

Passed December 13, 1873.

Be it enacted by the Legislature of West Virginia :

One thousand dollars appropriated for Glenville Normal School.

How drawn and expended.

For what purposes.

1. The sum of one thousand dollars is hereby appropriated out of any moneys in the treasury, to be drawn and expended under the direction of the executive committee of the branch normal school at Glenville, in furnishing building, purchasing paratus and the improvement of the grounds of the said branch normal school at Glenville in the county of Gilmer.

Where property to vest.

2. The property procured and provided under the provisions of this act shall vest and be in the regents of the state normal school

Commencement.

3. This act shall take effect from the date of its passage.

CHAPTER CLV.

AN ACT amending the charter of the City of Wheeling, in relation to the paving or macadamizing of the streets and alleys, and the payment of the expenses thereof.

Passed December 13, 1874.

Be it enacted by the Legislature of West Virginia :

Commissioners on street pavements; when and how appointed.

1. It shall be the duty of the council of the city of Wheeling, at their first regular meeting in January next, or as soon thereafter as practicable, to appoint a board, consisting of three free-holders of said city, to be called the board of commissioners on street pavements. The members of said board shall be duly

sworn or affirmed, diligently and faithfully to discharge the duties imposed upon them by this act. It shall be the duty of said board to ascertain and report the value of the cobble-stone pavement in front of each lot, or fractional part of a lot, fronting or bounding on any street or alley of the city of Wheeling, extending to the middle of said street or alley, which has been heretofore paved at the expense of said city, and make report thereof as soon as practicable. For his services each member of said board shall receive such compensation as may be fixed and determined by the council of said city.

Oath of office.

Their duty.

Their compensation.

2. Two-thirds of the value of the cobble-stone pavement to the middle of the street or alley as thus ascertained and reported by said board, shall be a lien upon the lot or fractional part of a lot mentioned in said report, in front whereof said pavement has been heretofore laid down at the expense of said city, and shall be paid in four equal instalments; the first being due and payable on the first day of September next, and the remaining instalments on the first day of September in the years 1875, 1876 and 1877. The said value for each lot or fractional part of a lot, shall be returned in the name of the person holding the title thereof in fee, whether in his own right or any fiduciary character. The lien created and declared by this section may be enforced by the decree of the circuit court for Ohio county, should any instalment of the said two-thirds of the value, ascertained and reported by said board as to any lot or fractional part of a lot, not be paid into the treasury of the city, or to such person or officer as may be designated or appointed by the council thereof to collect and receive the same, within three months after the said instalment shall have become due and payable, upon not less than thirty days' notice, either by personal service or by publication for four weeks in some news-

Two-thirds of the value of the cobble stone pavement to the middle of the street or alley, which has been paved at the expense of the city, as ascertained and reported by commissioners, shall be a lien upon the lot &c., and paid in four equal instalments.

When instalments due and payable.

In whose name value of lot to be returned.

How and when lien enforced.

Notice; How given.

Report of board to be referred to joint committee.

Persons aggrieved.

Revision of report.

When report deemed conclusive evidence as to values set forth in it.

Revised report. In whose hands to be placed for collection.

Powers of such person.

To give bond.

Responsibility imposed.

Proceeds collected; to be kept separate and known as "the street pavement fund."

Separate account to be kept of it.

How to be used or disbursed.

When council shall order streets or alleys to be paved.

Under whose superintendence.

paper published in the city of Wheeling. The report of said board shall be referred to a joint committee of the council of said city, and after hearing any one claiming to be aggrieved, after having not less than ten days' notice of the time and place of their meeting, the said joint committee shall revise the same, with full power of correction and amendment; and thereafter said report thus revised and corrected, shall be deemed and taken as conclusive evidence of the values set forth in said report.

'3. The said report thus revised and corrected shall be placed in the hands of such person or officer as the council may select or appoint for collection; and for the performance of this duty, such person or officer shall have the same powers as are vested in the sheriff of Ohio county by law for the collection of taxes; shall give bond with such security as the council may by ordinance require, and together with his sureties shall be subject to the same responsibilities as are by law imposed upon said sheriff and his sureties. The proceeds of all collections, made under and by virtue of this act, of the two-thirds of the value of the cobble-stone pavements heretofore laid by said city of Wheeling, shall be and remain a separate and distinct fund, to be known as "the street pavement fund;" of which a separate account shall be kept in the books of the city, and shall never be used or disbursed by said city for any other purpose than the paving the streets and alleys of said city, in the manner and upon the terms hereinafter prescribed.

4. Upon the petition of the persons owning the greater part of the lots or grounds fronting or bounding upon both sides of any street or alley between any two streets, the council shall order the said street or ally to be paved between the curbs, with cobble-stones or other suitable material, under the superintendence of the street commissioner of said city, upon the lowest and best terms to be obtained by adver-

tisement for bids or proposals, and two-thirds of the cost of such payment from the curb on either side to the middle of the street or alley shall be assessed to the owners of the lots or fractional part of lots fronting or bounding on such street or alley in proportion to the distance so fronting or abutting, owned by each; the one-fourth whereof shall be paid within thirty days after the completion of the work, and the remainder in three equal instalments, payable respectively in one, two and three years from the date of said first payment; the other third of the cost of such pavement shall be paid by the city; the intersection of every two streets, or of a street and alley paved under this section, shall be paved at the sole expense of the city. The sums of money thus assessed, shall be liens upon the several lots and fractional parts of lots upon which they are assessed, to be enforced by decree as hereinbefore provided or collected by the same person or officer, with the same powers, and subject to the same responsibilities as are prescribed by the third section of this act. When the "street pavement fund" shall have been exhausted, or if no such fund shall have been collected, the council shall be authorized to order the paving of streets or alleys under the terms of this act at their discretion, and the one-third thereof shall be paid out of the general fund in the treasury of the city.

Upon what terms.

Two thirds of cost :
how assessed.

How and when
paid.

One-third to be paid
by city.

When city to pay
entire expense.

Liens for money
assessed

How enforced and
collected.

Duty of council
when there is no
"street pavement
fund"

5. Upon the petition of the persons owing the greater part of the lots fronting or bounding on both sides of any street, or alley between any two streets, the council shall be authorized to order the said street or alley to be macadamized, under the superintendence of the street commissioner, upon the lowest and best terms to be obtained by advertisement for bids or proposals, and two-thirds of the cost of such macadamizing, from the curb on either side to the middle of the street or alley, shall be assessed to the owners of the lots or fractional parts of lots fronting or abutting

When council shall
authorize streets or
alleys to be maca-
damized.

Under whose super-
intendence.

Upon what terms.

Two-thirds of the
cost of.

How assessed

How and when
paid.

One-third of the
cost to be paid by
city.

What macadamized
at sole expense of
city.

Lien of money thus
assessed.

How enforced or
collected.

on such streets or alleys, in proportion to the distance so fronting or abutting owned by each. The one-fourth thereof shall be paid within thirty days after the completion of the work, and the remainder in three equal installments, payable, respectively, in one, two and three years from the date of the first payment; the other third of the cost of said macadamizing shall be paid by the city. The intersections of streets, or of a street and alley macadamized under this section, shall be macadamized at the sole expense of the city. The sums of money thus assessed for macadamizing shall be a lien upon the several lots or fractional parts of lots, upon which they are assessed, to be enforced by decree as hereinbefore provided, or collected by the same person or officer, with the same powers and subject to the same responsibilities as are prescribed by the third section of his act.

CHAPTER CLVI.

AN ACT providing for the appointment of a Janitor.

Passed December 13, 1873.

Be it enacted by the Legislature of West Virginia :

Janitor.

Board of Public
Works to appoint.

His duty.

1. There shall be appointed by the board of public works, a janitor whose duty it shall be to properly guard and take care of the capitol buildings and grounds together with all of the apartments therein, or therewith connected, and have the same kept clean and comfortable. He shall, during the sessions of the Legislature, under the direction of the president of the senate and the speaker of the house of delegates, have charge of the halls and committee rooms of the two houses, and keep the same properly cleaned, warmed and in good order, and shall do and perform

such other duties in relation thereto, as either house or the board of public works may require.

2. The said janitor appointed shall be for the term His term of office. of four years, and until his successor is appointed and qualified, commencing with the term of the governor: Provided, That the first term under this Proviso. act shall begin within thirty days after the passage thereof, and may continue in office until and including the third day of March, 1877, and the appointment of said janitor for the first term shall be made as soon as practicable after this act takes effect.

3. The board of public works may remove said janitor at any time for misconduct, incompetence, By whom and for what he may be removed. neglect of duty or gross immorality.

4. In all cases of vacancies for janitor, the same shall be filled by appointment by the board of public Vacancies; how filled. works for the unexpired term.

5. For the services of himself and assistants, the janitor shall be paid at the rate of one thousand dollars per annum, and three dollars per day in addition His salary and per diem. during the session of the Legislature. And no other No additional compensation to be allowed. or further emolument or compensation shall be paid him out of the treasury on any account.

6. All acts or parts of acts inconsistent with this act are hereby repealed. Inconsistent acts repealed.

7. This act shall be in force from and after its pas- Commencement. sage.

CHAPTER CLVII.

AN ACT to amend and re-enact chapter thirty-four of the acts of the Legislature of 1872-3, entitled, "An act fixing the time of holding the circuit courts of the county of Wood."

Approved December 15, 1873.

Be it enacted by the Legislature of West Virginia :

Act amended and
re enacted.

That chapter thirty-four of the acts of 1872-3, be amended and re-enacted so as to read as follows :

Circuit court.

"1. That the circuit court for the county of Wood shall be held on the first Monday of June and the first Monday of December in each and every year.

Term of 12 Wood
county.

"2. This act shall be in force from its passage."

CHAPTER CLVIII.

AN ACT prohibiting persons digging ginseng or other medical roots, or prospecting for the same on the lands of another without the consent of the owner, and prescribing the punishment therefor.

Passed December 15, 1873.

Be it enacted by the Legislature of West Virginia:

Ginseng.
Digging of prohib-
ited in Pocahontas,
Greenbrier and
Webster counties,
without the consent
of the owner or
owners.

1. It shall be unlawful for any person to dig ginseng, or other medical roots, or prospect for the same on the lands of another, in the counties of Pocahontas, Greenbrier and Webster without the consent of the owner or owners thereof first had and obtained.

Provisions of act to
extend to all of the
counties.

2. The provisions of this act shall extend to all of the counties of the State. *Provided*, That the county court of any county may, upon the petition of one hundred voters of the county, direct to have the same enforced in their said county or any district or districts thereof.

Proviso.

Penalty for viola-
ting this act.

3. Any person violating this act shall be deemed guilty of a misdemeanor; and upon conviction thereof shall be fined not more than fifty dollars, and may be confined in the county jail not exceeding two months.

Commencement.

4. This act shall be in force from and after the passage thereof.

CHAPTER CLIX.

AN ACT to amend and re-enact section sixty-eight of chapter one hundred and fourteen of the acts of the legislature of 1872-3.

Passed December 15, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section sixty-eight of chapter one hundred and fourteen of the acts of the legislature of 1872-3 Section 68 amended and re-enacted. approved April 7, 1873, entitled "An act amending and re-enacting certain sections of chapter thirty-nine of the Code, concerning boards of supervisors, so as to confer upon county courts or other tribunals, the administration of county affairs," be, and the same is hereby, amended and re-enacted so as to read as follows :

"68. The inhabitants of a town that provides for its own poor, and keeps its streets in order, shall not be required to pay poor levies or road taxes ; but beyond this no city, town or village shall be exempt, from the payment of county levies by reasons of any provisions in its act of incorporation."

Inhabitants of a town that provides for its poor, &c., not to pay poor levies or road tax.
Not exempt beyond this.
"amended"
70.16
182

CHAPTER CLX.

AN ACT to grant the right of laying a railway track on the bed of the National road, eastward of the city of Wheeling.

Passed December 15, 1873.

Be it enacted by the Legislature of West Virginia :

Amended by Senate 50077 p 63.

If any railroad company be incorporated under a general law of this State, for the transportation of persons and property in and from the city of Wheeling to a certain point, the consent of the State is given to construct such railway along the sides of, and across the National road.

Subject, however, to regulations prescribed by board of public works.

Telegraph poles may be removed and replaced.

Rights, powers and privileges of corporations.

Restrictions and regulations imposed.

Certain sections of the code not to apply to company.

Condemnation of real estate.

Commencement.

1. That if any railroad company be incorporated under a general law of this State, to construct and operate by animal or steam power, or both, a railway for the transportation of persons and property in and from the city of Wheeling, to some terminus at or near Elm Grove, in Ohio county, or any intermediate point, the assent of the State is hereby given to the construction and operating of said railway along the sides of the National road and across the same where necessary or proper, but subject, nevertheless, to such regulations and directions, if any, as may be in that behalf prescribed by the board of public works. And for the purpose of constructing and operating its railway, along or near the National road, any such railway company may remove any of the telegraph poles, along its route, replacing the same in other convenient positions, so as not to injure or impair the rights of any telegraph company.

2. As soon as such corporation shall have organized it shall possess all the rights, powers and privileges, and be subject to the restrictions and regulations specified in chapters fifty-two and fifty-three of the code of West Virginia, as modified by the constitution of the State and by this act, except that the sixty-second section of chapter fifty-three, and the last sentence of the fifth section of chapter fifty-two, shall not be applicable to the company intended to be hereby incorporated, and that application may be made and proceedings had and completed for the condemnation of any real estate necessary or proper for the works of said company, before the circuit court of Ohio county, or the judge thereof in vacation.

3. This act shall be in force from its passage.

CHAPTER CLXI.

AN ACT to amend and re-enact chapter sixty-three

of the code, concerning marriages, births and deaths.

Approved December 15, 1873.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-three of the Code is amended and re-enacted so as to read as follows:

Chapter 63 of the code amended and re-enacted.

1. Every license for a marriage shall be issued by the clerk of the county court of the county in which the female to be married usually resides; and shall be registered in a book to be kept by the clerk for that purpose.

Marriage licenses; by whom issued.

To be registered.

2. If any person intending to marry be under twenty-one years of age, and has not been previously married, the consent of the father or guardian, or if there be none, of the mother, of such person, shall be given either personally to the clerk of the county court or in writing subscribed by a witness, who shall make oath before the clerk of said court that said writing was signed or acknowledged in his presence by such father, guardian or mother as the case may be.

Persons under twenty-one years of age; what consent necessary.

Written consent; proof of.

3. When any minister of the gospel shall, before the circuit or county court of any county in this state, produce proof that he is duly licensed as such, and of his being in regular communion with the religious society of which he is a member, and give bond in the penalty of fifteen hundred dollars, such court may make an order authorizing him to celebrate the rites of marriage in all the counties of this State.

How ministers authorized to celebrate the rites of matrimony.

Bond; penalty of.

Authority to extend throughout the State.

4. The county court of any county, when it deems it expedient may appoint one or more persons, resident in such county to celebrate the rites of marriage within the same, or a particular district thereof, and upon any person so appointed giving such bond as is required of an ordained minister, may make a like order, authorizing him to celebrate the

Power of court to appoint persons to celebrate the rite in his county, &c. Bond in such case.

Order may be re-
scinded.

rites of marriage in such county or district, as the case may be. Any order made under this or the preceding section may be rescinded at any future time.

How marriages
celebrated in other
cases.

5. Marriages between persons belonging to any religious society which has no licensed minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society.

Marriages must be
under a license.

6. Every marriage in this State shall be under a license, and solemnized in the manner herein provided; but no marriage solemnized by any person professing to be authorized to solemnize the same, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of authority in such person, if the marriage be in all other respects lawful, and be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage, nor shall any marriage celebrated within this State between the seventeenth day of April, eighteen hundred and sixty-one, and the first day of January, eighteen hundred and sixty-six be void by reason of the same having been solemnized without such license.

When valid,
although cele-
brated by person
not having authori-
ty:

When valid, al-
though celebrated
without a license.

Fee for celebrating
marriage.

7. Any person authorized to celebrate the rites of marriage shall be paid by the husband a fee, of at least one dollar in each case.

Marriages between
colored persons
legalized.

8. All marriages heretofore celebrated between colored persons under license issued by any clerk of a county court of this state, and all marriages between such persons, whether under such license or not, if the same were consummated in good faith on the part of the persons so married, and such persons were living together as husband and wife on the twenty-eighth day of February, eighteen hundred and sixty-six, shall be deemed valid.

9. No man shall marry his mother, grand-mother, step-mother, sister, daughter, grand-daughter, half-

sister, aunt, uncle's wife, son's wife, wife's daughter, or her grand-daughter, or step-daughter, brother's daughter, sister's daughter, or wife of his brother's or sister's son. If any man have heretofore married his brother's widow, such marriage is hereby declared to be legal and valid, and exempt from penalties prescribed by former laws.

Within what degrees of relationship marriages prohibited.

Certain marriages made valid.

10. No woman shall marry her father, grand-father, step-father, brother, son, grand-son, half-brother, uncle, daughter's husband, husband's son, or his grand-son, or step-son, brother's son, sister's son, or husband of her brother's or sister's daughter.

Prohibited degrees continued.

11. In the cases mentioned in the two preceding sections, in which the relationship is founded on a marriage, the prohibition shall continue in force, notwithstanding the dissolution of such marriage by death or divorce, unless the divorce be for a cause which made the marriage, originally, unlawful or void.

Prohibition continues after dissolution of marriage, &c.

Exceptions.

12. If any female of the age of twelve and under fourteen years, shall marry without the consent of her father or guardian, or if she have none, of her mother, the county court of the county in which she resided at the time of such marriage, shall upon the petition of her next friend, commit her estate to a receiver, who shall give bond before the court, and shall hold the said estate, and pay out the rents and profits thereof to her separate use under the direction of the court until she arrive at the age of twenty-one years, and at any time thereafter the court may direct the same to be delivered to her as her sole and separate property.

Marriage of females under fourteen.

When and how the estate of such female may be committed to a receiver

His bond.

His duty.

When property may be delivered to her as her sole and separate property.

13. The clerk of the county court of every county shall keep three books, to be called, respectively, the register of marriages, the register of births and the register of deaths.

Register to be kept by clerk.

14. It shall be the duty of every clerk of every county court issuing a marriage license, to ascertain

Record to be kept
by clerk on issuing
license.

from the party obtaining the same, and to make a record thereof, before delivering the said license, as near as may be, the full names of both parties, their respective ages, and their places of birth and residence. Such license shall be signed by the clerk of said court, and shall be in the following form, mutatis mutandis:

County of —, to wit:

Form of such
license.

To any person licensed to celebrate marriages: You are hereby authorized to join together in the holy state of matrimony, according to the rites and ceremonies of your church or religious denomination, and the laws of the State of West Virginia, _____ and _____. Given under my hand, as clerk of the county court of the county of —, this — day of —. The clerk of the county court, at the time of issuing the license, shall make a complete record, in a well bound book, of all matters in this section required to be ascertained by him. The minister or other person celebrating such marriage shall, within sixty days thereafter, return the said license to the office whence it issued, with an endorsement thereon of the facts of such marriage, and the time and place of celebrating the same.

Return of minister
celebrating mar-
riage.

Duty of clerk upon
return of license.

15. The clerk of the county court to whom such license and certificate shall be returned shall file and preserve the same in his office, and within twenty days after receiving the same, record a full abstract thereof in his register of marriages, and the minister's certificate, and the name of the person signing the certificate, and make an index of the names of both the parties married, which may be done by additions, in appropriate columns, to the record made at the time of issuing the license.

Record of marriage
celebrated out of
the State.

16. If at the time of celebrating any marriage out of this State, either or both of the parties thereto be a resident or residents of this state, a certificate or statement thereof, verified by the affidavit of any person present at such celebra-

tion, may be returned to the clerk of the county court of the county in which the husband resides, if he be such resident, and otherwise, of the county in which the wife resides, and an abstract thereof shall be recorded by him in the manner prescribed in the fifteenth section.

17. If any minister or other person who shall give bond in order to his being authorized to celebrate marriages in this state, shall fail to comply with the fourteenth section, the condition of such bond shall be deemed to be thereby broken, and he shall also be subject to the penalty hereinafter prescribed for such failure.

When condition of bond of minister deemed to be broken.

18. Every assessor shall make an annual registration of the births and deaths in his district. When he ascertains the personal property subject to taxation, he shall ascertain the births and deaths that have occurred in the year ending on the thirty-first day of December preceding, and such circumstances as he is hereinafter required to record. He shall ascertain the births and deaths in each family, from the head of such family, if practicable.

Register of births and deaths to be made annually by assessors.

To be ascertained from the head of the family.

19. He shall record in a book to be furnished him by the auditor for that purpose, as far as can be ascertained, the date and place of every such birth, the full name of the child, (if it has a name;) the sex and color thereof; also whether the child was born alive or still-born, the full name of the parents so far as known; if there be more than one child born at one birth, the fact and number shall be stated, and any other circumstances of interest relating to any birth.

Book for record to be furnished by auditor.

What to be entered therein.

20. Every assessor shall in like manner record in a book to be furnished him by the auditor for that purpose, the place and date of every death in his district during the year ending on the preceding thirty-first day of December, the full name, sex, age, condition, (whether married or not,) and the color of the deceased; also the occupation, if any, of the deceased,

Register of deaths to be made by assessors.

Duties in recording
the same.

and his or her place of birth, the names of his or her parents, if known, and (if deceased was married,) the name of the husband or wife; also the disease or cause of the death, as far as such facts can be ascertained.

To be made out
alphabetically.

Affidavit.

When to be return-
ed to clerk of coun-
ty court.

Compensation of
assessor, and how
paid.

21. The assessor shall alphabetically arrange each of the books so furnished him, and shall make and subscribe an affidavit therein, to the effect that he has pursued the directions of this chapter according to the best of his skill; and he shall return his said books to the clerk of the county court of the county on or before the first Wednesday of August. In addition to the compensation now allowed by law to such assessor, the sum of three cents shall be paid him for such birth and death listed and reported to the clerk of the county court of the county in said assessor's district, under the provisions of this chapter, and the same shall be paid out of the county treasury, upon the certificate of the clerk of said court, setting forth the number of births and deaths returned, and that the said returns have been accurately and fully made according to the laws regulating the same and within the time prescribed thereby.

Duties of clerk upon
return being made
to him.

22. The clerk of every county court shall enter upon record a full abstract of the contents of the said book, containing a record of births, in said register of births, setting forth in convenient tabular form all the circumstances hereinbefore required to be recorded with reference to the assessor's book, and making an alphabetical index of the names of the children born, and (when they have no names,) of the names of the parents.

Abstract to be
recorded by clerk.

23. He shall in like manner, record a full abstract of the contents of the said book, containing a record of deaths. in his said register of deaths, setting forth in convenient tabular forms, all the circumstances hereinbefore required to be recorded, with references

to the assessor's books, making an alphabetical index of the names of the deceased.

24. The clerk of every county court shall file and preserve in his office the books so deposited with him by the assessor.

Books returned by assessor to be filed and preserved in office of clerk.

25. On or before the first day of March in each year, the clerk of every county court shall transmit to the auditor a copy of his register of marriages, and so much of his record taken at the time of issuing such licenses, as is not contained in his said register of marriages, which was taken by him within the next year preceding the first day of January, distinguishing, by appropriate columns or notes, the licenses issued on which the minister's certificates of marriage have not been returned, and the licenses containing such certificate. He shall also, on or before the first day of September in each year, transmit to the auditor a copy of his register of births, and register of deaths happening within said year, ending the first day of January next preceding. If the assessors have not returned a list of births and deaths in the form to be furnished them, and in a manner prescribed by the auditor, so as to enable the clerk of the county court to make up a record, such clerk shall nevertheless certify that no returns have been made to his office. For the failure to perform any duty required by this section, such clerk so failing shall forfeit not less than ten or more than one hundred dollars.

When copy of register of marriages &c. to be transmitted to auditor by clerk.

If no return be made, he must certify the fact to auditor.

Penalty for failure.

26. Such copies shall be filed and presented to the auditor's office, and from these the auditor shall prepare an abstract annually of marriages, births and deaths in each county, and make a report upon said registration once in every period of two years, to be laid before the Legislature.

Penalty for failure. Duty of auditor in relation thereto.

27. The said books to be kept by the clerks of the county court, and copies, (or any part thereof,) certified by said clerk lawfully having the custody thereof,

Copy of register as evidence

shall be prima facie evidence of the facts therein set forth in all cases.

Laws in relation to marriages, births &c., to apply to colored persons.

28. All laws in force in this state regulating marriages and marital rights, and providing for the registration of births, marriages and deaths, shall apply to colored persons in the same manner as to white persons, but the registration of births, marriages and deaths of white and colored shall be kept separate and distinct.

But registration of to be kept separate.

29. A clerk of the county court shall be allowed a fee of five cents for every birth, death or marriage registered by him, and reported to the auditor in pursuance of this chapter, to be paid out of the county treasury. He shall also be entitled to ten cents for every copy of an entry in said books, to be paid by the party requiring such copy.

How information of births and deaths obtained.

30. If an assessor, in any case, cannot obtain the requisite information concerning any birth or death, from the head of a family, as before required, he shall obtain the same from such persons as are hereinafter required to give it, or if that cannot be done, from any other person, always recording the name of the person giving the information.

Duty of justice to record deaths.

31. Every justice shall keep a like record of the deaths in relation to which inquests are taken by him, and give a copy thereof to any assessor, whenever called on by him for that purpose, annually, as far as the same relates to deaths in such assessor's district. For every neglect or failure to perform any duty required of him by this section, a justice shall forfeit twenty dollars.

Penalty on justice for neglect of duty.

Correction of record of deaths by assessor

32. The assessor shall make such entries or corrections, in his record of deaths as may be supplied or warranted by the copies so to be furnished to him by justices, noting the source of information.

33. The head of any family, if he be not at his resi-

dence when the assessor calls there, to obtain the information required by this chapter to be obtained by him, shall give the same information to the proper assessor on or before the first day of July in the same year; and for a failure or neglect to do so, shall forfeit one dollar. If any head of a family, being lawfully requested to give any such information, shall refuse to give the same, he shall forfeit ten dollars.

Duties of heads of families.

Penalties for violation of requirements of this chapter.

34. If any assessor fail to obtain any information respecting a birth or death, which he is by this chapter authorized or required to obtain, and which he can procure, he shall for every such failure, and for every failure to record the information acquired by him respecting a birth or death according to this chapter, forfeit five dollars.

Penalty on assessor for neglect of duty as to births and deaths.

35. If any assessor fail to perform the duties required of him by the twenty-first section of this chapter, he shall forfeit fifty dollars.

Penalty on assessor for failure to perform duties required by section twenty-one.

36. If the clerk of any county court fail to perform the duties required of him by the fifteenth section of this chapter, he shall forfeit ten dollars for every such offense; and if he fail to perform any duty required of him by the twenty-second, twenty-third, twenty-fourth and twenty-fifth sections, he shall, for every such offense forfeit fifty dollars.

Penalty on clerk of county court for neglect of duty.

37. If any clerk, assessor, coroner, or minister celebrating a marriage, or clerk, or keeper of the records of any religious society, shall in any book, register, or record, which such officer or person is by this chapter required to keep or make, or in any copy or certificate which by this chapter he is required to make or give, knowingly make any false, erroneous or fraudulent entry, record, registration, or written statement, he shall, for every such offense, forfeit not less than one hundred nor more than five hundred dollars.

Penalty for false register or record

38. If any person, upon whose information or state-

For false information.

ment any record or registration may lawfully be made under this chapter, shall knowingly give any false information, or make any false statement, to be used for the purpose of making any such record of registration, he shall forfeit not less than fifty nor more than three hundred dollars for every such offense.

Auditor to supply blanks to assessors and clerks.

39. The auditor shall furnish the clerk of the county court of every county, and the assessor of every district with all forms and instructions deemed by him necessary or proper for carrying out the provisions of this chapter; and shall furnish the assessors with the necessary paper, properly printed, on which to make their register of births and deaths. The auditor shall not furnish to the clerks of the county courts printed blanks for marriage licenses.

Not, to furnish printed blanks for marriage licenses.

Commencement.

40. This act shall take effect from its passage.

CHAPTER CLXII.

AN ACT giving construction to the word "justice."

Approved December 16, 1873.

Be it enacted by the Legislature of West Virginia :

Word "justice," construction of.

1. That the word "justice" wherever used to designate an official character, shall be construed to mean a "justice of the peace."

Commencement.

2. This act shall take effect, and be in force from its passage.

CHAPTER CLXIII.

AN ACT authorizing the Manufacturers and Farm-

ers' Bank of Wheeling, to close the affairs of said bank.

Approved December 18, 1873.

Be it enacted by the Legislature of West Virginia :

1. All notes and claims against the Manufacturers and Farmers' Bank of Wheeling, shall be presented for payment during business hours at the banking house of the Peoples' Bank of Wheeling, in the city of Wheeling, to some officer or officers of said Peoples' Bank of Wheeling, on or before the first day of April, 1874, Notes and claims against manufactures and farmers bank of Wheeling, where to be presented for payment. and after the said date no suit, motion or proceeding at law, or in equity, shall be commenced for the recovery of any note, claim or liability now existing against said Manufacturers and Farmer's Bank of Wheeling, Unless so presented &c. no proceeding shall be commenced for recovery of any claim &c. against said bank. unless the same shall have been presented, as aforesaid, without obtaining payment thereof.

2. A copy of the first section of this act shall within thirty days after the date of the passage of this act be published in the Wheeling Intelligencer and the Wheeling Register. Publication of first section of act.

3. This act shall be in force from, and after its passage. Commencement.

CHAPTER CLXIV.

AN ACT in relation to title papers destroyed by fire or otherwise.

Approved December 18, 1873.

Be it enacted by the Legislature of West Virginia :

1. That whenever the book or books in which are required to be recorded deeds, wills or other papers relating to the title or boundaries of lands have been, or may hereafter be burned, lost or destroyed by reason of the burning of the clerk's office of any court, re- Title papers destroyed.

Duty of county court
in relation thereto.

Court to fill
vacancy.

Affidavit of com-
missioner appoint-
ed.

When filed.

Commissioner to
record testimony
in book.

Where and when
testimony to be
taken.

When to be complete
ed.

Notice of Commis-
sioner.

How published.

Recordation of
notice.

Cost of publishing
notice, how paid.

Duty of Commis-
sioner.

Testimony of wit-
ness, as to a deed.

corder's or surveyor's office, or otherwise, it shall be lawful for the county court of the county, in which such burning took place, to appoint a commissioner to take such testimony in relation to such destroyed title papers, as is hereinafter provided, and such court may fill any vacancy that may occur.

2. It shall be the duty of the commissioner, appointed as aforesaid, before entering upon the duties assigned him by the provisions of this act, to take and file with the clerk of the county court an affidavit that he will perform the duties required by this act, to the best of his skill and judgment.

3. He shall provide a well bound book at the expense of the county in which to record such testimony as he may take for the purpose aforesaid. Such testimony shall be taken at the clerk's office of the county court, between the hours of nine o'clock a. m., and five o'clock p. m.; and within the period of five years after the taking of the same shall have been commenced.

4. Said commissioner shall give notice in some newspaper having the largest circulation in his county, of the time and place of the commencement of his duties; which notice shall be published for four consecutive weeks prior thereto; a copy of which notice shall be recorded in the book aforesaid. The cost of publishing said notice shall be paid for by the county.

5. On the day fixed by said notice, the said commissioner shall attend at the clerk's office of the county court of his county, and there take and record in said book, the testimony of any credible person that may appear before him touching the existence or execution of any deed, will, or other title paper which was recorded in any book burned, lost or destroyed, as aforesaid. The witness shall describe the paper as near as may be; if a deed, the names of the grantor and grantee; the date thereof, with the number of acres called for as near as the witness can recollect; the locality of the land conveyed; the name of the tract,

if it had any ; if improved or unimproved, and, if improved, who made the improvement ; who lived upon the same, and how long ; what the calls were with regard to corners, boundaries, or adjacent lands, and any thing else which the commissioner may deem material to describe the title to the land, or to locate the same. And if a will, or other title paper, describe the same with the same particularity as in the case of a deed. As to a will.

6. For the purpose of carrying out the provisions of this act, the commissioner aforesaid shall have authority to administer oaths to such witnesses as may be brought before him ; he may also summon witnesses and enforce their attendance when desired by any person interested, in like manner as witnesses are compelled to appear before commissioners in chancery ; and any person who shall wilfully swear falsely before said commissioner, to any material fact, shall be guilty of perjury, and upon conviction thereof shall be punished as in other cases of perjury. When the testimony in any case shall have been partly taken by one commissioner, and shall die or his place otherwise vacated before such testimony is completed, the successor of such commissioner may complete the taking of the same with like effect as if it had been completed by the commissioner who began to take the same. Authority of Commissioner, as to administering oaths.
As to summoning and enforcing attendance of witnesses.
Penalty for swearing falsely.
If commissioner die or his office otherwise vacated, before testimony completed, his successor to complete the same.

7. The commissioner for his service shall be allowed the same fees as commissioners who are authorized to take depositions, and witnesses shall be allowed the same compensation as witnesses in other cases, which shall be charged to and paid by the person at whose instance the deposition is taken. Compensation of commissioner ; of witnesses.
How paid.

8. Every witness whose testimony shall be taken shall sign the same ; and the commissioner, at the close of each day's proceedings, shall sign said proceedings. Witness to sign testimony.
Also commissioner.

9. The commissioner may adjourn from day to day or from time to time, not exceeding thirty days at any

Commissioner may adjourn from day to day; not exceeding thirty days at any one time.

To deliver books containing proceeding to clerk of county court.

Clerk to preserve the same, and give certified copies.

His compensation.

Admissibility of such evidence in certain suits.

When certified by clerk admissible in any court.

Commencement.

one adjournment, until he shall have completed and closed his duties under the provisions of this act, after which he shall deliver the book or books containing his proceedings to the clerk of the county court, who shall preserve the same among the records of his office. The said clerk shall give certified copies from said depositions, whenever requested by any person to do so, and he shall receive the same compensation therefor as in other cases.

10. The evidence taken, as aforesaid, shall be admissible in all suits or controversies in relation to the title or boundaries of lands in said county, whenever such evidence is relevant and no higher or better evidence can be had; copies of said depositions when duly certified by the clerk of the county court of said county, shall be admissible in any court, the same as the original.

11. This act shall be in force from, and after its passage.

CHAPTER CLXV.

AN ACT for the payment of James E. Moore, for services as commissioner of the revenue of Pocahontas county, in the year 1861.

Approved December 18, 1873.

Be it enacted by the Legislature of West Virginia:

\$29.71 appropriated to pay James E. Moore, as commissioner of the revenue.

1. That the sum of two hundred and thirty-nine dollars and seventy-one cents, is hereby appropriated out of any moneys in the treasury not otherwise appropriated, for the payment in full, of James E. Moore, for his services as commissioner of the revenue for the county of Pocahontas, for the year 1861.

Auditor authorized to pay amount due.

2. The auditor is hereby directed to draw his warrant on the treasury for the amount hereby appropriated, or so much thereof, as he may find unpaid.

CHAPTER CLXVI.

AN ACT requiring county courts to refund certain moneys to the corporate authorities of cities, towns or villages.

Approved December 18, 1873.

Be it enacted by the Legislature of West Virginia :

1. That any county court in this State, that has under the operation of section sixty-eight of chapter one hundred and fourteen of the acts of 1872-3, levied and collected, or shall hereafter collect from the taxpayers of any incorporated city, town or village, that provides for its own poor, and keeps its own streets, side-walks, alleys and bridges in repair, any road, bridge, or poor tax ; the county court of said counties are hereby required to refund to the corporate authorities of said city, town or village, said taxes.

County courts authorized to refund certain taxes to cities and towns that provide for their own poor and keep their streets &c., in repair.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CLXVII.

AN ACT to provide for changing the names of towns and villages not incorporated, and of districts of counties.

Approved December 19, 1873.

Be it enacted by the Legislature of West Virginia :

1. When the people of any town or village not incorporated, or of a district in a county, are desirous to change the name of such town, village or district, they may petition the county court or other tribunal established in lieu thereof of the county wherein such town, village or district is situated ; and if it appear to such court or other tribunal, that a majority of the actual resident voters of such town, village or dis-

Names of towns &c., not incorporated, and of districts,

How changed.

Notice when and how posted.	trict is in favor of such change, it shall cause notices to be posted up at five of the most public places in said town, village or district, for at least thirty days
What notice shall state.	previous to the next sitting of said court or tribunal, which notices shall state the fact that a petition has been presented to said court or tribunal by the people of said town, village or district, praying for such change and that unless those interested in the said change appear at the next term, or such term as said court or tribunal may designate, and show cause why such change should not be made, there will be an order rendered granting such change, which notice shall be
How signed.	signed by the president of such court or tribunal: Provided, also, That if there be a newspaper published in such town, village, or district, the said notice shall be published in it.
When court shall render decree granting change of name.	2. At the time to which the court or other tribunal has continued the petition, if such court or other tribunal is satisfied that a majority of the resident voters of such town, village or district is still in favor of such change of name and has signed the petition asking therefor, it shall render a decree granting such change, which decree shall be recorded in the office of the clerk of such court or other tribunal. The
Where decree recorded.	costs of such change and recording shall be paid by the petitioners. But should it appear to the said court or other tribunal that a majority of the resident voters of such town, village or district is not in favor of such change, it shall dismiss the petition, and tax the costs of the proceedings against the petitioners.
Costs, how paid.	
When court shall dismiss petition.	
Costs, how taxed,	

CHAPTER CLXVIII.

AN ACT prescribing the times of holding the county courts in the county of Wetzel.

Approved December 19, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the county courts of Wetzel county be here-
after held on the second Tuesday in February, April, Circuit courts of
Wetzel, times to
holding the same. June, August, October and December.

2. This act shall be in force from its passage. Commencement.

CHAPTER CLXIX.

AN ACT making appropriations of public money to pay members and officers of the Legislature for the session commencing on the twentieth day of October, 1873.

Approved December 19, 1873

Be it enacted by the Legislature of West Virginia :

1. That there shall be, and is hereby appropriated to pay members and officers of the Legislature a sum sufficient for that object for the session commencing on the twentieth day of October, 1873, to be paid out of the treasury during the fiscal year ending on the thirtieth day of September, 1874. Appropriation to
pay members and
officers of the legis-
lature for adjourn-
ed session 1873.

To pay per diem compensation of twenty-four Senators, and sixty-five members of the House of Delegates, including the pay of the president of the senate and speaker of the House of Delegates—sixty-four days \$23,060.00. To pay per diem of
members.

To pay per diem compensation of the officers, clerks of committees, pages and messengers of the legislature for the session commencing on the twentieth day of October, 1873, \$7,176.00. To pay compensa-
tions of officers &c.

2. Be it further enacted, That all moneys hereby appropriated to be used within said fiscal year, ending the thirtieth day of September, 1874, remaining un- Moneys undrawn
on 30th day Sep-
tember 1874 to re-
invest in treasury.

Auditor authorized
to issue his warrant.

No money to be
drawn beyond the
appropriation
made.

Commencement

drawn on said day shall re-invest in the treasury, and shall not thereafter be drawn without other or further authority of law. But to pay the same and every part thereof, the auditor is hereby authorized and required when properly and lawfully demanded, to issue his warrant on the treasury in the same manner he would be required to do if each item of expenditure was directed to be paid to a creditor by name. And no money shall be drawn from the treasury by reason of this act beyond the appropriations hereby made.

3. This act shall be in force from its passage.

CHAPTER CLXX.

AN ACT to amend and re-enact sections two, six, seven and ten of chapter one hundred and sixty-one of the code, concerning taxation and allowance of costs.

Approved December 19, 1873.

Be it enacted by the Legislature of West Virginia :

Sections code
amended and re-
enacted.

1. That sections two, six, seven and ten of chapter one hundred and sixty-one of the code, be amended and re-enacted so as to read as follows :

Guard for jail.
allowance for;
how made and
aid.

"2. The said circuit court, before certifying any allowance shall inquire into the condition of the jail; if it appear that a guard was necessary because of the insecurity of the jail, it shall order the allowance to be certified to the county court and it shall be chargeable to the county. But if otherwise, and the guard was necessary the allowance shall be certified for payment out of the treasury."

How witnesses
for the state are
paid.

"6. Payment shall not be made out of the treasury to a witness attending for the state in any prosecution for a misdemeanor, but the fees of witnesses in such cases if not collected from the defendant or

prosecutor shall be audited by the county court and paid out of the county treasury."

"7. A sheriff or other officer, for traveling out of his county to execute process in a case of felony and doing any act in the service thereof for which no other compensation is provided, shall receive therefor out of the treasury, such compensation as the court from which the process issued may certify to be reasonable. Compensation of sheriffs in certain cases.

When in such case an officer renders any service for which no specific compensation is provided the court in which the case may be, may allow therefor what it deems reasonable and such allowance shall be paid out of the treasury."

"10. A justice before whom there is any proceeding in a criminal case preliminary to prosecution in a county court, shall certify to the clerk of such court all the expenses incident to such proceeding which are payable out of the treasury." Whole costs of prosecuting to be certified by justice.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CLXXI.

AN ACT to amend and re-enact sections five, nine, ten and eighteen of an act approved December 21, 1872, entitled "An act regulating appeals, writs of error and supersedeas."

Be it enacted by the Legislature of West Virginia :

1. That sections five, nine, ten and eighteen of an act approved December 21, 1872, entitled "An act regulating appeals, writs of error and supersedeas," be amended and re-enacted so as to read : Sections amended and re-enacted.

"5. With such petition there shall be a transcript of the record of so much of the case wherein the judgment, decree or order is, as will enable the court or Transcript of record to be exhibited with petition.

judge to whom the petition is to be presented, properly to decide on such petition, and enable the court, if the petition be granted, properly to decide the questions that may arise before it; but only so much of the record shall be copied as any party may desire, except as follows :

To what court or judge petition presented.

"9. The petition may be presented to the court wherein the case is to be docketed, if the appeal, writ of error or supersedeas be allowed, or to a judge thereof or to a judge of a circuit court, when the appeal, writ of error or supersedeas is intended to be taken to the supreme court of appeals; or if the judgment, order or decree be of a county court, to a circuit court or to any circuit judge.

Appeals to be docketed in court of appeals.

"10. If upon a petition as aforesaid the appeal, writ of error or supersedeas to a judgment, order or decree of a circuit court or a court of limited jurisdiction within any incorporated town or city be allowed, the appeal, writ of error or supersedeas shall be docketed in the supreme court of appeals."

In cases docketed in court of appeals; How clerk to prepare records.

"18. In every case docketed in the court of appeals, the clerk of the court shall make a table of contents to the whole record. Of the petition, so much of the record as the counsel for any party interested or the court may direct, and the table of contents, the clerk shall cause eighteen copies to be printed in octavo form, long primer type, with one inch extra margin outside of page on good paper, the title on cover to be in the centre, preserving in the margin of the printed record the paging of the record from the court below, which shall be used in printing and returned to the clerk's office. The clerk shall take care that the printing be properly done. Of the copies printed he shall deliver one to each judge, two to the counsel on each side, retain one in his office, transmit one to the clerk of the court below, (in which the case was originally decided,) and shall deliver one copy to the reporter: Provided, That it shall

How printed.

How distributed.

not be the duty of the clerk to have the record printed until the appellant or plaintiff shall deposit with him a sufficient amount to pay for the said printing, which shall be regulated by the price of the public printing as provided by law for printing of the same character. The clerk of the court of appeals shall superintend the printing of all records except those hereinafter provided for, and shall receive from the appellant for such services, a cent for every fifteen words printed. The costs of such printing, unless otherwise ordered by the court, shall be taxed against the opposite party, if the judgment, decree or order appealed from be reversed. And should the appellant or plaintiff fail within six months after his case has been docketed in the court of appeals, to deposit with the clerk a sufficient amount to pay for the printing of the record he shall be deemed to have abandoned his appeal and the same shall be dismissed; but it may be renewed at any time within five years from the date of the judgment, order or decree appealed from. When a cause is submitted to the court at either of the places prescribed by law for holding its sessions and the court is not prepared to decide it during the session, it may be decided at the next session at either of the other places of holding the said court."

Clerk may demand payment in advance for printing docket.

Clerk to Superintend printing.

His compensation.

How paid.

When appellant deemed to have abandoned his appeal and the same dismissed.

When appeal may be renewed.

A cause submitted to the court and not decided during same session, may be decided at next session.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CLXXII.

AN ACT fixing the times for holding the circuit courts in the first and third judicial circuits.

Approved December 10, 1876.

Be it enacted by the Legislature of West Virginia :

1. That the days upon which the terms of the cir-

Terms of court in
first and third
judicial circuits.

cuit courts shall commence in the counties comprising the first and third judicial circuits shall hereafter be as follows :

- Hancock,** For the county of Hancock, on the first Monday of March and first Monday of September.
- Brooke,** For the county of Brooke, on the second Monday of March and the second Monday of September ;
- Marshall,** For the county of Marshall, on the fourth Monday of March and the fourth Monday of September.
- Ohio,** For the county of Ohio, on the third Monday of April and the third Monday of October.
- Jefferson,** For the county of Jefferson on the fourth Tuesday of March and third Tuesday in October in each year.
- Berkeley.** For the county of Berkely, on the second Tuesday of May and the fourth Tuesday of November of each year.
- Morgan,** For the county of Morgan, on the first Tuesday of May and the second Tuesday of September in each year.
- Commencement** 2. This act shall be in force from its passage.

CHAPTER CLXXIII.

AN ACT to authorize the Governor to institute proceedings for the recovery of moneys improperly paid out of the treasury, and to appropriate money to defray the expenses of such proceedings.

Approved December 19, 1873.

Preamble. WHEREAS, His Excellency, the Governor of this state, has in his message of the eighteenth inst., represented to the legislature that he is of opinion that Henry S. Walker, the late public printer, has charged for and receives from the treasury of the state, a much larger amount for the public printing, than by law he was entitled to receive, and recommends that he be authorized to institute proceeding in the courts

of the state to recover the amount thus (as he thinks) improperly paid ; therefore,

Be it enacted by the Legislature of West Virginia :

1. That the governor be and he is hereby authorized, (if in his opinion the interest of the state demands it,) to institute proceedings in the courts of the state for the recovery of any moneys thus improperly paid. And for the purpose of defraying the expenses of such proceedings, the sum of two thousand dollars (or so much thereof as may be needed) be and the same is hereby appropriated out of any moneys in the treasury not otherwise appropriated, the same to be subject to the control of the governor, for the purpose mentioned in this act and none other.

Governor authorized to institute proceedings for the recovery of moneys improperly paid for public printing.

Two thousand dollars appropriated for defraying expenses.

Appropriation controlled by the Governor.

2. That unless the governor within sixty days institute a suit against the said Henry S. Walker, under the provisions of this act, that the attorney general be required to do so immediately thereafter and prosecute it to a final determination without delay.

Unless the Governor institute suit within sixty days--that the Attorney General do so.

CHAPTER CLXXIV.

AN ACT to amend and re-enact sections one, three, four, five, six and seven of chapter one hundred and sixty of the code, relating to exceptions, execution of judgment and writ of error.

Approved December 19, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections one three, four, five, six and seven of chapter one hundred and sixty of the code, be amended and re-enacted so as to read as follows :

Sections of code amended and re-enacted.

"1. A party in a criminal case or proceeding for contempt, for whom a writ of error lies to a higher court, may except to an opinion of the court and tender a bill of exceptions, which (if the truth of the

Bill of exceptions in criminal cases.

When and how
taken.

case be fairly stated therein) the judge if it be to a circuit court and the president and justices or a majority of them if it be a county court, shall sign, and it shall be a part of the record."

Writ of error.

"3. A writ of error shall lie in a criminal case to the judgment of a circuit court from the supreme court of appeals, and to a judgment of a county court from the circuit court of the county. It shall lie in any case for the accused, and if the case be for the violation of a law relating to the revenue it shall lie also for the state."

In what cases writ
lies.

"4. To the judgment of a circuit court for a contempt of court other than for the non-performance of or disobedience to, a judgment, decree or order, a writ of error shall lie from the supreme court of appeals, and to a like judgment of a county court a writ of error shall lie from a circuit court."

In vacation of
supreme or circuit
court; how award-
ed.

"5. In the vacation of the supreme court of appeals a writ of error may be awarded by any judge thereof, or judge of a circuit court, and in vacation of a circuit court by a judge of any circuit court."

Writ operates as a
stay of proceedings.

✓

"6. A writ of error awarded under this chapter to any judgment shall operate as a stay of proceedings in the case until the decision of the court of appeals or circuit court therein."

Judgment on writ
of error.

"7. The court from which a writ of error lies shall affirm the judgment, if there be no error therein and reverse the same in whole or in part, if erroneous, and enter such judgment as the court whose error is sought to be corrected ought to have entered or remand the cause and direct a new trial, affirming in those cases in the supreme court of appeals where the court is equally divided."

Commencement.

2. This act shall be in force from its passage.

CHAPTER CLXXV.

AN ACT to legalize the elections heretofore held in

the independent school district in Ritchie county and the qualification of the officers elected at said election.

Approved December 19, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the elections heretofore held in the independent school district in Ritchie county in which the town of Harrisville is situated, and the commissioners declared elected at such elections be and the same are hereby legalized.

Election of commissioners legalized.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CLXXVI.

AN ACT to prohibit putrid nauseous or offensive substances from being thrown into wells, cisterns, springs, brooks or branches of running water.

Approved December 19, 1873.

Be it enacted by the Legislature of West Virginia :

1. If any person or persons shall knowingly and wilfully throw or cause to be thrown into any well, cistern, spring, brook or branch of running water which is used for domestic purposes any dead animal, carcass or part thereof, or any putrid, nauseous or offensive substance, he or they shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than one hundred dollars, and may at the discretion of the jury, be confined in the jail of the county not exceeding ninety days, and shall moreover be liable to the party injured in a civil action for damages.

Persons prohibited from throwing putrid and nauseous substances into wells, &c.

Penalty.

May also be confined in jail.

Liability for damages.

2. This act shall be in force from its passage :

Commencement

CHAPTER CLXXVII.

AN ACT amending and re-enacting sections forty, forty-one, forty-two and forty-four of chapter one

hundred and eighteen of the acts of 1872-3, passed April 11, 1873, concerning elections by the people, and filling vacancies.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections forty, forty-one, forty-two and forty-four, of chapter one hundred and eighteen of the acts of 1872-3, concerning elections by the people and filling vacancies, be and the same are hereby amended and re-enacted so as to read as follows :

Sections amended
&c.

Elections to fill vacancies; for what time.

How superintended conducted and result ascertained. When to go into office.

“40. Elections to fill vacancies shall be for the unexpired term ; they shall be held at the general election next ensuing after a vacancy shall occur, and shall be superintended, conducted and returned, and the result ascertained, certified and declared in the same manner, and by the same officers; and the persons elected, having first duly qualified, shall enter upon the duties of their respective offices within ten days after the result of the election shall have been declared according to law.”

Office of Governor.
Vacancy in.

How filled.

“41. In case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the governor, the president of the senate shall act as governor, until the vacancy is filled, or the disability removed; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of delegates; and in all other cases, where there is no one to act as governor, one shall be chosen by joint vote of the legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy.”

“42. When a vacancy shall occur in the office of

judge of the supreme court of appeals or of a circuit court, the governor shall issue his writ of election to fill such vacancy for the residue of the term: Provided, that if the unexpired term be less than two years, the governor shall appoint a judge to fill such vacancy. If from any cause the office of auditor, treasurer, state superintendent of free schools or attorney general, shall be, or become vacant it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office untill his successor shall be elected and qualified according to law. If there be a vacancy in the representation from this State in the Congress of the United States, the governor shall, within ten days after the fact comes to his knowledge, give notice thereof by proclamation, to be published in such newspapers in the district where such vacancy may occur, as he may deem best calculated to give information thereof to the voters of such district; and in such proclamation he shall appoint some day not over sixty nor less than thirty days from the date thereof, for holding the election to fill such vacancy, which election shall be held accordingly and the governor shall issue writs of election, directed to the sheriffs of the counties included in such districts; and every such sheriff on the receipt thereof, shall give notice of the same to the several commissioners of election in the several districts of their county whose duty it shall be to hold the election to fill such vacancy, and make return thereof as prescribed for a regular election for a member of congress. In case of a vacancy during the recess of the senate in any office which is not elective, and whose appointment is not otherwise provided for by law, the governor shall, by appointment, fill such vacancy until the next meeting of the senate, when he shall make a nomination for such office, and the person so nominated, when confirmed by the senate, (a majority of the senators elected concurring by yeas and nays,) shall hold his office during the remainder of the term and until his

Vacancy in office of judges.

Governor to issue writs of election to fill vacancy.

When Governor to appoint.

Vacancy in office of auditor, treasurer, &c.

Governor to appoint.

Vacancy in representative in Congress.

How filled.

Governor to give notice by proclamation.

How published.

When election to be held.

Duty of sheriffs. Returns; how made.

Vacancy in any office, not elective, during recess of Senate.

How filled.

Person rejected by Senate shall not again be nominated for same office, &c., unless at request of senate.

Nor appointed during recess.

Term of office of person confirmed by Senate.

Bond of officer temporarily appointed.

successor shall be appointed and qualified. No person after being rejected by the senate shall be again nominated for the same office during the same session, unless at the request of the senate; nor shall such person be appointed to the same office during the recess of the senate. When he shall make a nomination for such office, the person so nominated, when confirmed by the senate, shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. The bond, if any be required by law to be given by any officer so temporarily appointed by the governor, shall be in such penalty as the governor may direct."

Vacancies in office of clerk of circuit court; how filled.

In office of sheriff, assessor, clerk of county court, &c., how filled.

Bond in such cases.

No jailor shall become sheriff.

In cases of vacancy where officers have no deputy, &c., how provided for.

"44. When a vacancy shall occur in the office of clerk of the circuit court, it shall be the duty of the judge thereof to appoint a clerk who shall hold his office until the next general election, when one shall be elected by the people to fill the unexpired term. If the office of sheriff, surveyor of lands, assessor, or clerk of the county court, shall be or become vacant, the duties, responsibilities and emoluments of any such office shall devolve upon his deputy, if he have one, until the general election next ensuing, and for this purpose, any bond which such deputy may have executed to his principal shall be held valid and binding, both upon the said deputy and his surties therein, as to any liability which said deputy may thereafter incur, and if the said deputy shall not have given any bond, or one which the county court may deem insufficient, they shall require him to execute a proper bond, with sufficient securities, in default thereof shall declare the said office vacant. Provided, no jailor shall become sheriff by virtue of this act. In case of a vacancy in the office of prosecuting attorney or constable, or in the office of sheriff, surveyor of lands, assessor or clerk of the county court, by reason of either or any of said officers having no deputy, the failure of any deputy to give a

good and sufficient bond as herein provided, the president of the county court or the presiding officer of any tribunal established in lieu of a county court for police and fiscal purposes, shall fill such vacancy or vacancies by appointment, and the person or persons so appointed, after being first duly qualified, and giving bond, (if any bond is required of such officer by law,) before the officer appointing him or them, shall fill such office or offices until his or their successor or successors shall have been elected and qualified. If a vacancy shall occur in the office of president of the county court it shall be filled until the next regular election by the justices of the county, all of whom shall be summoned for that purpose, at the first term after such vacancy shall have occurred; and when a vacancy occurs in the office of justice of the peace it shall be filled until the next general election, by the county court at its first term after such vacancy shall have occurred."

In office of president of county court.

How filled.

In office of justice.

How filled.

2. All acts or parts of acts inconsistent with this act are hereby repealed.

Inconsistent acts repealed.

CHAPTER CLXXVIII.

AN ACT providing for the probate of wills and for the appointment and qualification of personal representatives, guardians, committees and curators, during the recess of the regular sessions of the county courts.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

1. The clerks of the several county courts when such court or the circuit court is not in session, shall have the same power to admit wills to record, appoint and qualify personal representatives, guardians, committees and curators, and require and take ne-

Clerks of county courts.

Their powers as to recording wills.

Appointment and qualification of personal representatives, &c.

cessary bonds from them during the recess of the regular sessions of the county courts, as such courts now have: Provided, That no jury shall be empaneled by such clerks to settle questions of fact in dispute before them.

Not empowered to settle questions of fact by a jury.

Duty of clerk where a controversy is likely to arise in relation to the probate of a will.

2. When a will is presented to such clerk for probate and a controversy is likely to arise in relation thereto, he shall without deciding anything concerning such probate, then and there inform the party proposing and the party objecting to such probate, that at the next term of the circuit or county court held for the trial of causes, whichever may be first hold, he will present such will to said court, and at such time he shall present the same to such court.

At what court he must present such will.

3. Any person interested, may within one year, or in case of disability of such person within one year after such disability is removed, appeal as of right to the circuit or county court from any order made by such clerk in relation to any such probate of wills, appointment and qualification of personal representative, guardian, committee or curator.

Appeal from order of clerk in relation to probate of will, &c.

4. When any such person desires to appeal he shall execute and deliver to such clerk a bond in such penalty as will cover the costs likely to arise from such appeal, and with security to be approved by such clerk and conditioned for the payment of all such costs and to abide by and perform any judgment which may be rendered against him by the court on such appeal. When such bond is given such clerk shall make out a record of all the proceedings had before him in the case and shall have it before said county court at its next succeeding term held for the trial of causes if it be an appeal to the county court and if it be an appeal to the circuit court he shall within ten days after the appeal is taken, transmit the record to the clerk of such court. The clerk shall file the record and docket the appeal; in either

Party appealing to give bond.

Penalty, and condition of bond.

Clerk to have record of all proceedings had before him before the court appealed to.

court the appeal shall be tried as if the questions involved therein had arisen upon a motion for the probate of such will or the appointment and qualification of such personal representative, guardian, committee or curator originally made in such court. The court shall render such judgment as is right, affirm or revoke any order made by such clerk concerning the appointment and qualification of such personal representative, guardian, committee or curator or the probate of any will and make such other appointment or order concerning the same as it deems proper; and if it be in favor of the appellee and the court be of opinion that he is entitled to costs, it shall be for the costs of the appeal and against the appellant and those who signed the appeal bond. Such appeal shall not be tried until ten days notice in writing shall have been given by the party asking for such trial, to the adverse party.

Duty of clerk as to the record and appeal.

How appeal tried.

Judgment of court thereon.

Costs of appeal. If judgment be in favor of appellee.

Notice of trial of appeal.

It shall be no objection to a trial of such appeal that the notice was not given ten days before the term of the court at which a trial is asked, or that it was not placed upon the docket of the court before the term began.

Shall be no objection to trial of appeal, that notice was not given ten days' before term of court, &c., or not docketed before term began.

5. The accounts of all fiduciaries appointed under the provisions of this act shall be returned passed upon and recorded, and be subject to the same rules and regulations as if such fiduciaries had qualified in the county court.

Accounts of fiduciaries appointed by clerk to be returned recorded, &c., as if they had qualified in county court.

6. Every clerk shall keep such record of the appointment and qualification of all fiduciaries made by and had before him as he is required to keep of such as are had and made in court. All wills admitted to probate before him shall be recorded as if they had been admitted to probate by the court, and for any failure to keep such record or to record such will he shall be liable to the same fine as if it had been a failure to keep a record of such fiduciaries as quali-

Record to be kept by clerk of the appointment, &c., of fiduciaries, and of the probate of wills.

Fine for failure.

fied in said court or to record a will admitted to probate in said court.

Person interested may, after ten days' notice, move court to require new appeal bond or additional security.

7. When any clerk shall have taken bond under the provisions of this act, any person interested may after ten days' notice to the party executing such bond move the county court to require of such person a new bond or additional security; and if it be satisfied that such new bond or additional security should be given it shall make such order as it would make had such bond been given in court.

Order made by Court.

Impeachment of wills admitted to probate by clerk.

8. A will admitted to probate by any clerk under the provisions of this act may be impeached in the same manner and within the same time as if it had been admitted to probate by a court.

Commencement.

9. This act shall be in force from its passage.

CHAPTER CLXXIX.

AN ACT to amend and re-enact section three of chapter one hundred and fifty-five of the code, concerning search warrants.

Approved December 20, 1873.

Be it enacted by the legislature of West Virginia:

Section of code amended and re-enacted.

1. That section three of chapter one hundred and fifty-five of the Code be amended and re-enacted so as to read as follows:

Search warrants. How directed.

What to command.

"3. Every search warrant shall be directed to the sheriff or any constable of the county in which the place to be searched may be, and shall command him to search the place designated, and seize such stolen property, or other things if found and bring the same and the person in whose possession they are, before a justice or court having cognizance of the case."

Such warrant may be executed either in the day or night.

When executed.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CLXXX.

AN ACT to regulate the sale of poisons in the State of West Virginia.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia:

1. It shall be unlawful from and after the first day of July 1874, for any person to retail any poison, enumerated in schedules A. and B. of this act except as hereinafter provided, to wit:

Sale of poisons regulated after July 1, 1874.

SCHEDULE A.

Arsenic and its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium hydrocyanic acid, strychnia and all other poisonous vegetable alkaloids and their salts, essential oil of bitter almonds, opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce.

Enumeration of such poisons.

Exception as to paregoric, &c., of less than two grains to the ounce.

SCHEDULE B.

Aconite, belladonna, colchicum, conium, nux vomica, henbane, savin, ergot, cotton-root, cantharides, creosote, digitales, and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate zinc, mineral acids, carbolic acid, and oxalic acid, without distinctly labelling the bottle, box, vessel or paper in which the said poison is contained, and also the outside wrapper or cover, with the name of the article, the word "poison" and the name and place of business of the seller; nor shall it be lawful for any person to sell or deliver any poison enumerated

Enumeration of poisons continued

How labelled when sold.

Inquiry to be made of purchaser before sale or delivery.

Must be aware of its poisonous character, and be used for a legitimate and lawful purpose.

Entry book.

Persons selling any poison included in "Schedule A" must make an entry thereof before delivering the same

What such entry may state.

Book open for inspection.

By whom inspected

Preserved for reference.

Not applicable to prescriptions of practitioners of medicine.

Not to apply, except section one, and the penalties, to any practitioner who does not keep open shop for retailing medicines and poisons, nor to wholesale dealers.

Penalty.

ated in said schedules A. and B. unless upon due inquiry it be found that the purchaser is aware of its poisonous character and represents that it is to be used for a legitimate and lawful purpose.

Nor shall it be lawful for any person to sell any poison included in schedule A. without before delivering the same to the purchaser, to cause an entry to be made in a book kept for that purpose, stating date of sale, the name and address of the purchaser, the name and quality of the poison sold, the purpose for which it is represented by the purchaser to be required and the name of the dispenser; such book to be always open for inspection by the prosecuting attorney, sheriff, or coroner of the county and the mayor or principal officer of any city, town or village therein, and such other officers as the above named authorities or any court of the state may direct, and to be preserved for reference for at least five years.

The provisions of this section shall not apply to the dispensing of poisons in not unusual quantities or doses, upon the prescriptions of practitioners of medicine.

2. Nothing contained in the foregoing sections shall apply to interfere with the business of any practitioner of medicine, who does not keep open shop for the retailing of medicines and poisons, nor with the business of wholesale dealers, except section one and the penalties for its violation.

3. Any person who shall fail to comply with the regulations and provisions of this act shall for every such offense be deemed guilty of misdemeanor and upon conviction thereof shall be fined fifty dollars.

CHAPTER CLXXXI.

AN ACT to amend and re-enact section forty-four of chapter fifty-three of the code.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section forty-four of chapter fifty-three of the code be amended and re-enacted so as to read as follows :

“44. That in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected; or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner, and on any other question to be determined at any meeting of stockholders, if a vote by stock be demanded upon such question by any stockholder, every stockholder may in person or by proxy give the following vote on whatever stock he may hold in the same right, that is to say one vote for every share of stock held in such company.”

CHAPTER CLXXXII

AN ACT providing an alternative method of constructing and keeping in repair county roads.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

1. That the voters of any county in this state may adopt the alternative method of constructing and keeping in repair the county roads as herein provided.
2. The county court upon petition having been pre-

When and how
question submitted
to the voters of
county.

sented to it signed by at least one hundred voters of the county shall at the next ensuing term thereof, order that the said alternative method of constructing and keeping in repair the county roads, shall be submitted to the voters of the county for adoption or rejection at the next ensuing election for delegates to the legislature, and a majority of the votes cast at said election shall determine the question.

Majority deter-
mines question.

Road precinct.

Surveyor of roads.

When and how
appointed.

Term of office.

Commencement

Vacancies, how
filled.

Clerk of county
court to notify
appointee.

Appointee to
qualify within ten
days.

His oath of office.

His bond.

3. Each county district shall constitute a road precinct, and when a county shall have adopted the provisions of this act, it shall be the duty of the county court at its first term after the adoption of the provisions of said act, and biennially thereafter, to appoint a surveyor of roads for each road precinct; said surveyor of roads shall hold his office for the term of two years, beginning on the first day of January next succeeding his appointment. Vacancies in the office of surveyor of roads shall be filled by appointment by the county court for the unexpired term.

4. It shall be the duty of the clerk of the county court to give written notice to the appointee of said appointment as soon thereafter as practicable, and each person so appointed shall within ten days after having been notified of such appointment, qualify by taking the oath prescribed by the fifth section of the fourth article of the constitution of this state, and shall before entering upon the discharge of the duties of his office give bond with security to be approved by a justice of the peace of his precinct, in such sum as may be required by the county court, and be conditioned for the faithful performance of his duties.

Duty of surveyor
as to laying out and
dividing roads in
his precinct.

Length of sections.

To be numbered
and described.

5. It shall be the duty of each surveyor of roads within twenty days from the first day of January next, succeeding his appointment (provided that he was not appointed to fill a vacancy) to lay out and divide all the county roads in his precinct into sections not exceeding one half mile in length, which sections he shall number and describe in a book kept by him for

that purpose, and he shall specify therein the nature and extent of the work which he may deem necessary for improving and keeping in repair each section of said county road for the term of two years.

Shall specify nature and extent of work necessary to keep each section of road in repair for two years.

6. It shall be the duty of each surveyor of roads to expose all the county roads in his precinct one section at a time, at public sale, to the lowest and best bidder, commencing on the second Tuesday in April next succeeding his appointment, and continuing as aforesaid until all the sections shall have been sold; of which sales at least fifteen days notice shall be given by posting not less than ten hand bills in as many public places in his precinct.

Sale of roads in each precinct, duty of surveyor in relation thereto.

When to commence and how long to continue.

Notice of such sale.

7. Any person or persons purchasing a contract or contracts at said sales shall give bond with freehold security, to be approved by the surveyor of roads in a sum to be fixed by said surveyor, for the performance of the contract or contracts so purchased.

Purchaser of contracts at said sales to give bond, &c.

8. Each surveyor of roads shall divide all the county roads which may be laid out, altered or established hereafter in his precinct, into sections not exceeding one half mile in length, number and describe them, specify the nature and extent of the work to be done, and within twenty days after he has received an order for opening said roads and after he shall have given fifteen days notice by having posted ten handbills at as many public places in his precinct, said surveyor of roads shall proceed to sell said county roads at public sale, in the manner provided by section six of this act, after which said roads shall be kept in repair in the same manner as other county roads in the precinct.

Roads hereafter laid out, altered or established, Duty of surveyor in relation thereto

Sale of such roads. When and how made.

How kept in repair.

9. It shall be the duty of each purchaser of a contract or contracts to sign his name and to write the sum which he is to receive for repairing his section or sections, under the description and specifications of said sections contained in the book as provided in section five of this act.

Duty of purchaser of contract as to signing the same &c.

Duty of surveyor upon complaint that contractor has failed or refuses to comply with stipulations of contract.

10. If any citizen of a precinct complain to the surveyor of roads thereof that any contractor or contractors therein have neglected or refused to keep his or their section or sections in repair in accordance with the specifications, it shall be the duty of the said surveyor to examine thereinto within five days after such complaint shall have been made, and if upon such examination he deem the complaint well founded he shall give notice thereof in writing to the party so complained of, and he shall accompany said notice with a request that the party so complained of shall within a reasonable time thereafter put his or their section or sections in repair in accordance with the specifications, and if the said contractor or contractors still neglect or refuse to repair the same it shall be the duty of said surveyor to cause the same to be put in repair, and the cost of said repairs shall be recoverable from said contractor or contractors by said surveyor as other claims of equal amount are now recoverable by law.

Costs of repairs recoverable from contractor.

If surveyor be contractor and fails or refuses to keep road in repair.

11. If a surveyor of roads shall be a purchaser or contractor and shall neglect or refuse to keep in repair according to his contract any portion of his section or sections, it shall be the duty of a justice of the peace of his precinct upon complaint of a citizen of said precinct to proceed in the same manner as the surveyor of roads is required to do in section ten of this act.

How proceeded against.

Inspection of roads by surveyor. When.

12. It shall be the duty of each surveyor of roads to inspect all the county roads in his precinct at least once in every two months, and if he find that any contractor or contractors have neglected or refused to fulfill his or their contract, he shall give notice thereof and enforce the same in the manner provided in section ten of this act.

To enforce contract if not fulfilled.

Annual report of surveyor to county court.

13. It shall be the duty of each surveyor of roads as soon as practicable after the sale of said county roads or of any road newly established or changed

and annually thereafter to ascertain and report in writing as soon as ascertained, to the county court the amount of money necessary to construct and keep in repair the county roads in his precinct for the term of one year; whereupon the county court at its first levy term thereafter shall provide for the amount so reported and any other expenses pertaining to the same, by levying a tax of one dollar and fifty cents on every male inhabitant of said precinct who has attained the age of twenty-one years; and the balance necessary to open and keep in repair the county roads in said precinct after having deducted said capitation tax and having added the estimated delinquencies, shall be levied on the property of said precinct taxable for state and county purposes. A list of persons liable under said assessment together with the amount with which each person is chargeable shall be delivered to the sheriff of the county and he shall collect the same in like manner as he collects other district taxes.

What report to contain.

How and when amount to keep roads in repair provided for.

Capitation tax.

Tax on property.

How and by whom collected.

14. It shall be lawful for any contractor or contractors who may move out of the precinct to yield up to the surveyor of roads the unexpired portion of his or their contract or contracts by giving written notice to said surveyor at least twenty days prior to the expiration of the term of his or their contract or contracts, The unexpired term of such contract or contracts shall be sold at private sale by the surveyor of roads.

If contractor move out of precinct, may yield up contract.

Notice to be given.

How unexpired term disposed of.

15. In case of death or removal out of the precinct the surveyor of roads shall cause to be paid to the representatives of such person deceased or to such person so removing in the same manner as other claims are required to be paid to contractors, such portion of the money specified in his or their contract or contracts as the surveyor of roads shall believe him justly entitled to.

In case of death removal of contractor out of precinct.

How paid.

16. The surveyor of roads shall have the right to

Surveyor may reject bids too high and sell such sections at private sale.

reject any bids which he may deem too high and sell such section or sections or new road at private sale.

Account kept by surveyor and rendered to county court.

17. Each surveyor of roads shall keep a regular account of the time necessarily employed and the expenses necessarily incurred by him with the date thereof, and render a sworn account thereof to the county court, and said court shall audit and if found correct shall order the payment of such expenses or such part thereof as it deems proper, and said court shall allow a reasonable per diem for such time to be paid out of the fund for road purposes in the precinct of such surveyor of roads.

Court to audit and order payment.

Per diem of assessor.

How paid.

18. Delinquent lists of taxes uncollected under the provisions of this act shall be returned to the county court and shall be disposed of relatively to this act as district levies for school purposes are disposed of.

Delinquent lists of taxes.

Where returned and how disposed of.

Claims of contractors.

19. All claims of contractors or others for money which under the provisions of this act may be due to such contractors or other persons, shall be paid by the sheriff of the county upon the order or warrant of the county court signed by the president thereof.

How paid.

Penalties on surveyor who has neglected or refusing to discharge duties in his office.

20. Any surveyor of roads duly appointed under the provisions of this act and who has qualified as such, neglecting or refusing to discharge the duties of his office, shall be subject to such fines and penalties as are provided by law and to which any other district officer would in like manner be subject.

Board of commissioners adopted by county in lieu of a county court.

21. Every board of commissioners adopted by any county in lieu of a county court for the transaction of police and fiscal affairs of such county, shall have all the powers and perform all the duties of a county court in carrying out the provisions of this act.

Their powers and duties under provisions of this act.

Counties adopting provisions of this act may discontinue same, as provided in section two for their adoption.

22. Any county having adopted the provisions of this act, and wishing thereafter to discontinue the same, may do so in the same manner as is provided in section two of this act for the adoption or rejection of said act, and if it shall determine at said election

to discontinue the same, the general road law in force at that time shall be in force in said county.

If discontinued general road law to be enforced.

23. Upon the adoption of this act by any county, all laws and parts of laws in conflict with this act shall be as to such county void and of no effect.

Upon adoption of this act by any county, all conflicting laws shall be void as to such county.

CHAPTER CLXXXIII.

AN ACT prescribing the times of holding the circuit courts in the sixth judicial circuit.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

That the act approved February 27, 1873, entitled "An act fixing the terms of the circuit courts of the sixth judicial circuit," be amended and re-enacted so as to read as follows :

Act 1873 amended and re enacted.

1. That the circuit courts of the sixth judicial circuit be hereafter held as follows :

For the county of Lewis, on the first day of March and the first day of September.

Terms of courts in sixth judicial circuit.

Lewis county.

For the county of Gilmer, on the eleventh day of March and the eleventh day of September.

Gilmer.

For the county of Upshur, on the twenty-second day of March and the twenty-second day of November.

Upshur.

For the county of Preston, on the seventh day of April and the seventh day of October.

Preston.

For the county of Randolph, on the twenty-third day of April and the twenty-third day of October.

Randolph.

For the county of Tucker, on the second day of May and the second day of November.

Tucker.

For the county of Barbour, on the ninth day of May and the ninth day of November.

Barbour.

Webster.

For the county of Webster, on the twenty-sixth day of May and the twenty-sixth day of September.

Commencement.

2. This act shall be in force from its passage.

CHAPTER CLXXXIV.

AN ACT to amend and re-enact an act entitled "An act to amend and re-enact an act passed March 3, 1870, entitled 'An act regulating the deposits of state funds and to secure interest thereon,' " passed February 17, 1871. *Cl. 67.*

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia:

Act of 1871 amended
and re-enacted.

1. That an act entitled "An act to amend and re-enact an act passed March 3, 1870, entitled 'An act regulating the deposits of state funds and to secure interest thereon,' " passed February 17th, 1871, be and the same is hereby amended and re-enacted so as to read as follows:

Board of Public
Works to contract
for interest on State
funds.

"1. The board of public works is hereby authorized to contract with the designated depositories of money belonging to the state for a rate of interest on said funds not less than four per cent. per annum.

Security for depos-
its to be given,

Amount of deposits
not to exceed
amount of security
Value of Security.

"2. Said board shall require said depositories to give good personal security or deposit with said board, United States or other good securities, and the amount of deposits shall not exceed at any time the amount of security, and no security shall be accepted by said board for more than its market cash value, and all securities shall be examined at least once every six months by said board, and if from any good cause, (which cause shall be entered on the order book of said board,) the security is considered insufficient additional security shall be required.

How often examin-
ed,

Additional security
when required.

"3. Said board shall issue its order to the auditor, ^{Failure to give required security.} directing him to draw his warrants on the treasurer for the full amounts of the deposits held by depositories neglecting or refusing to give the required security ^{What then.} and pay interest, designating what depositories such funds shall be transferred to and the amount to each.

"4. If a sufficient number of the designated depositories shall neglect or refuse to give good security ^{Failure to give security and pay interest.} and pay interest, then said board may contract with other banking institutions for the payment of interest ^{What then,} as indicated in the first section of this act and upon such banks filing good security with said board, the funds shall be transferred to said banks, as directed in the third section of this act.

"5. All national banks, banking institutions or bankers of good standing in this state, upon complying with the provisions of this act may be made depositories of state funds. ^{What banks may be depositories.}

"6. The money collected in any senatorial district shall be deposited in some one of the designated depositories of state funds situated therein; and the deposit of state funds shall be as nearly equal in each senatorial district as practicable. ^{Money collected in any senatorial district; where to be deposited.} *Amended '27.32.*

^{Deposits to be equal}

"7. The state treasurer shall in his semi-annual report, show the amount of money on deposit in each designated depository of state funds, the rate and amount of interest received thereon and the amount and character of the security given by each designated depository. ^{semi-annual report on treasurer; what to contain.}

2. All acts or parts of acts inconsistent with this act are hereby repealed. ^{Inconsistent acts repealed.}

CHAPTER CLXXXV.

AN ACT to amend and re-enact section eleven of

chapter seven of the code, concerning the appointment of deputies to certain officers.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

Code amended, &c.

1. That section eleven of chapter seven of the code of West Virginia, be amended and re-enacted so as to read as follows :

Deputies of clerks, sheriffs, surveyors, and assessors; when and how appointed.

“11. The clerk of any court with the consent of such court, may appoint any person his deputy, or the clerk of a circuit court or of the supreme court of appeals may with the consent of the judge or judges thereof in vacation, appoint any person his deputy. A sheriff or surveyor of lands, with the consent of the county court of the county, may appoint any person his deputy. And the deputy selected to act as jailor shall be approved by the court before acting as such jailor.

Appointment of jailor to be approved by court.

Consent to be entered of record.

What deputy may discharge duties of principal.

If his default deemed breach of bond of principal.

An assessor shall, with the advice and consent of the county court, have the power to appoint one or more assistants. Such consent shall in each case be entered of record. The deputy or assistant of an assessor during his continuance in office may discharge any of the official duties of his principal; and any default or misfeasance in office of such deputy or assistant shall be deemed a breach of the condition of the official bond of the principal.”

Commencement.

2. This act shall be in force from its passage.

CHAPTER CLXXXVI.

AN ACT providing for the sale of delinquent lands, not sold at the time provided for in chapter one hundred and seventeen of the acts of 1872-3.

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

1. That in all cases where the sale of land delin-

quent for the non-payment of taxes required to be sold by the provisions of chapter one hundred and seventeen of the acts of 1872-3, on the first day of the next succeeding term of the county court, commencing after the first day of October last, shall from any cause fail to have been made at the time required by said haptere, the county court shall designate some other county court day for making said sale, which sale shall not take place before the first day of May next. It shall be the duty of the sheriff or other officer charged with the execution of such sale to proceed to make such sale at the first or second term of the county court happening after the time prescribed in said chapter. For this purpose the said sheriff or other officer shall proceed in all things in the same manner so far as applicable, as is provided in said chapter; and the sales so made shall have the same effect in all things as if they had been made at the time prescribed in said act.

Lands delinquent for non payment of taxes, not sold on the first day of next succeeding term of county court, after first day of October last.

Sales of, when and how made.

2. This act shall be in force from and after the passage thereof.

Commencement.

CHAPTER CLXXXVII.

AN ACT legalizing the approval of the bonds of certain county officers.

Approved December 23, 1873.

WHEREAS, Many of the county officers elected on the twenty-second day of August, 1872, qualified as such by taking the proper oaths and having their bonds approved by the presidents of the county courts; and

WHEREAS, A doubt exists as to the legality of the approval of said bonds; therefore,

Be it enacted by the Legislature of West Virginia:

Approval of certain
bonds by Presidents
of county courts
legalized.

1. That the approval of said bonds by the presidents of the county courts is hereby legalized.

CHAPTER CLXXXVIII.

AN ACT repealing chapter thirty-four of the acts of 1871.

Approved December 20, 1873

Be it enacted by the Legislature of West Virginia :

1. That chapter thirty-four of the acts of 1871, entitled "An act to incorporate the town of Fairview, in Hancock county," be and the same is hereby repealed.

Act incorporating
town of Fairview
repealed.

CHAPTER CLXXXIX.

AN ACT to amend and re-enact section six of chapter ninety-eight of the acts of 1872, entitled "An act to incorporate the Shenandoah River Navigation Company."

Approved December 20, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section six of chapter ninety-eight of the acts of 1872, entitled "An act to incorporate the Shenandoah River Navigation Company," passed February 27, 1872, be amended and re-enacted so as to read as follows :

Act 1872 amended
and re-enacted.

"6. If the president and directors of said company shall not prosecute this improvement within one year from the passage of this act and complete the same within four years thereafter, as far as Shenandoah city, then the interest of said company in the naviga-

Limitation of time
within which the
work of improve-
ment is to be com-
menced and com-
pleted.

tion and tolls aforesaid shall be forfeited and cease."

CHAPTER CXC.

AN ACT to amend and re-enact sections five, six and seven of chapter fifteen of the code of West Virginia, concerning the secretary of state.

Approved December 20, 1873.

Be it enacted by the legislature of West Virginia :

1. That sections five, six and seven of chapter fifteen of the code of West Virginia, be amended and re-enacted so as to read as follows :

"5. Whenever the supreme court of appeals directs a volume of the reports of its decisions to be published, the commissioners of public printing shall contract in the manner prescribed by law, for the printing and binding of six hundred copies thereof in a style not inferior to Grattan's Reports, and the secretary of state shall secure the copy-right of the same for the benefit of the state.

The reports shall be styled "West Virginia Reports."

"6. He shall deliver one copy of each volume of the said reports as soon as practicable to the West Virginia University, one copy to the attorney general, one copy to each judge of the supreme court of appeals and of the circuit court, and transmit two copies to the Congressional Law Library at Washington, District of Columbia."

"7. With the advice and consent of the governor he shall determine at what price per volume the said reports heretofore or hereafter published, shall be sold not to exceed the actual cost thereof. He may from time to time place a reasonable number of copies thereof to be sold on commission in the hands

Code amended and re-enacted.

West Virginia reports.

Commissioners of public printing to contract for the printing and binding thereof.

Number of copies.

Secretary of State to secure copyright.

To whom copies of said reports to be delivered.

Price of reports : how fixed.

If his duty in relation
to selling same.

of booksellers, to be selected by him for the purpose, taking from each of them a written agreement specifying the number of volumes received, the price at which they are to be sold and for what commission, and undertaking, when thereto requested by the secretary of state to account for said books, to return such as may not have been sold and pay for the balance at the price specified, after deducting the commission for selling. The secretary may himself sell any of the said reports. The proceeds of all such sales shall be immediately paid into the treasury."

May sell himself.

Proceeds paid into
treasury.

CHAPTER CXCI.

AN ACT to amend and re-enact section one of chapter seventy-eight of the code of West Virginia, concerning the course of descents.

Approved December 22, 1873.

Be it enacted by the Legislature of West Virginia :

Code amended.

1. That section one of chapter seventy-eight of the code of West Virginia be and is hereby amended and re-enacted so as to read as follows :

Course of descents
generally.

"1. When any person, having title to any real estate of inheritance, shall die intestate as to such estate, it shall descend and pass in parcenary to his kindred male and female in the following course :

I. To his children and their descendants.

II. If there be no child nor the descendants of any child, then to his father.

III. If there be no father, then to his mother, brothers and sisters and their descendants.

IV. If there be no mother nor brother nor sister, nor any descendant of either, then one moiety shall go to the paternal, the other to the maternal kindred in the following course :

V. First, to the grandfather.

VI. If none, then to the grandmother, uncles and aunts on the same side and their descendants.

VII. If none such, then to the great-grandfathers or great-grandfather, if there be but one.

VIII. If none, then to the great-grandmothers or great-grandmother if there be but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants.

IX. And so on in other cases without end, passing to the nearest lineal male ancestors, and for want of them to the nearest lineal female ancestors in the same degree and the descendants of such male and female ancestors.

X. If there be no father, mother, brother or sister nor any descendant of either, nor any paternal kindred, the whole shall go to the maternal kindred; and if there be no maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred the whole shall go to the husband or wife of the intestate; or if the husband or wife be dead, to his or her kindred in the like course as if such husband or wife had survived the intestate and died entitled to the estate."

2. This act shall be in force from and after its passage.

Commencement.

CHAPTER CXCII.

AN ACT conferring powers upon a certain company which may be incorporated and organized for the purpose of erecting and maintaining booms on Big Fishing creek, in Wetzel county.

Passed December 22, 1873.

Be it enacted by the Legislature of West Virginia:

1. That said corporation is authorized and empow-

Corporation
authorized to erect
booms on Big Fish-
ing creek, in Wetzel
county.

ered to erect and maintain on Big Fishing creek, in Wetzel county, at any point or points within five miles of the mouth of said creek, such boom or booms, with or without piers, as may be necessary for the purpose of stopping and securing logs, masts, spars and other timber; and to erect such piers and side, branch, or shear booms in said creek or any of its tributaries between the points above mentioned as may be necessary for that purpose, and shall have exclusive privileges: Provided, That said booms be so constructed as to admit the safe passage of rafts and not prevent the navigation of said creek or tributaries; but no person or persons shall be allowed at any time to encroach upon or encumber said booms with rafts, either of saw-logs or other timber.

Provide as to
construction of
said booms.

Encumbering, &c.,
of said booms
prohibited

Authorized to er-
wharves.

2. That said corporation is authorized and empowered to erect and maintain wharves on Big Fishing creek, at any point within five miles from the mouth of said creek.

Adjustment of
damages.

3. That if any person suffer damage by the exercise of powers herein granted to said corporation, and the amount thereof cannot be agreed upon by the parties nor by some suitable person or persons selected by the parties to estimate the same, the circuit or county court of the county where the boom or booms, piers or wharves are situated shall, upon application of the party aggrieved, cause said damages to be ascertained by twelve disinterested freeholders of the same county, who shall make report to said court on or before the first day of the term next after the award shall have been made, and which being confirmed by the court shall have the effect of a judgment from the time of such confirmation.

Penalty for injuring
company's works or
defacing marks on
logs.

4. That if any person or persons shall wilfully and maliciously injure or destroy any of said booms or piers, or other works connected therewith, or shall remove, alter or deface any mark or marks on any

logs or other timber intended for said booms or contained therein, he or they shall pay treble the amount of the damages to the corporation, to be recovered by action at law and further to be liable to indictment and prosecution before the circuit court or county court of the county in which the offense is committed, for a misdemeanor, and on conviction shall be sentenced to pay a fine not exceeding one hundred dollars or imprisonment in the county jail for one year.

The Big Fishing creek and any branches thereof are hereby declared public highways.

Said creek and branches declared public highways.

The company shall not be liable for any loss or damage that may be caused by fire or flood, or by the unlawful acts of any person or persons not in their employ.

Company not liable for loss or damages by fire or flood, or acts of persons not in their employ.

5. That it shall be the duty of the corporation to cause the passage ways or open spans of said booms to be carefully guarded, so that no timber be permitted to escape; to raft all timber in said booms securely and faithfully with suitable warps and wedges for rafting and securing the same below said booms, and after three days' notice shall have been given by the corporation to the owner or agent having charge of said logs, and if the owner or agent, at the expiration of the time aforesaid, has not removed said logs, the corporation may remove the same to some convenient place at the shore of the stream below, and fasten the float of logs to the shore by ropes and stakes, and the owner or owners thereof shall pay such expenses as may arise in the removal and securing or fastening the same to the shore in the manner aforesaid, but the corporation shall not be responsible for any loss or damage, through the neglect or carelessness of their agents that may ensue to the owner or owners aforesaid, who shall not have removed their logs before the expiration of the time aforesaid.

Duty of corporation as to booming and rafting timber.

Notice to owner or agent

When corporation may remove logs from boom.

How logs to be secured.

Expenses, how paid

In such cases, corporation not responsible for loss or damage.

6. That it shall and may be lawful for said corporation to deliver the saw logs and other timber which

Corporation may deliver logs &c., to owner.

Toll and boomage;
rates of.

may have come into their said booms to the owners thereof and to charge and collect toll or boomage upon the said logs and other timber boomed, rafted and secured, including warps and wedges by which they are rafted, to-wit: Not exceeding one dollar and fifty cents per thousand feet board measure for all board logs, square timber, spars, clapboards, bolts and other timber.

Lien for toll and boomage.

The corporation shall have a lien on all said logs and other timber and lumber thus boomed, for the payment of all toll or boomage and other expenses, until such time as the same shall be paid to the corporation.

Unclaimed timber;
when and how sold.

7. That if any timber shall have been boomed, rafted and secured as aforesaid and no person should appear to claim the same and pay the tolls thereon, it shall be lawful for the corporation after posting a notice on the door of the court house of the county and two other places along said creek for four successive weeks, and describing the marks thereon, to sell said timber to the best advantage if no owner appear to claim the same, and at any time within a year from said sale the owner shall be entitled to receive the avails thereof after deducting the tolls, expenses and necessary charges, but if not claimed within said one year the proceeds shall inure to and be vested in said incorporation for their own use.

Notice to be given.

How proceeds disposed of.

Authority to hold land.

8. That for the purposes aforesaid, the said corporation shall be and are hereby authorized and empowered to purchase, hold and possess any real estate adjacent to said boom or booms or convenient thereto, with the right to erect all such buildings as may be necessary for the convenient management of their affairs and for the same purposes, their agents and those in their employ are hereby empowered to use and occupy the lands on the shore of said creek and the tributaries thereof so far as may be necessary, at the place or places where said booms or piers are

erected and at such other place or places as may be necessary for rafting and securing saw logs and other timber, and to pass and repass to and from said booms and piers over the land on both sides of said creek and the branches thereof for the purposes of making repairs from time to time, and generally for doing all matters and things necessary for the full accomplishment of the objects and purposes of said corporation, subject however, to pay such damages as may arise in the prosecution of such objects, the damages if any, to be ascertained and determined as in the third section of this act.

Damages therefor,
how ascertained, &c

9. That it shall not be lawful for any person or persons to take up and raft any floating saw logs or other timber within four miles above said boom or booms without being subject to the same charges for saw logs and other timber boomed, rafted and delivered by said corporation as in section six of this act, to be collected from the person or persons taking up and rafting said logs, from the owner or owners thereof, at the option of the corporation, as debts of like amount are recoverable by law.

Rafting or taking
up floating logs,
within four miles
above boom, pro-
hibited.

If done, person
subject to pay same
charges, to corpor-
ation, as section
six.

10. That should any boards, logs or other timber marked and registered in the office of the company, be carried by the winds, by the force of the current or otherwise, into any bays, creeks, coves or upon the shore, or any bar, or flat lands, it shall be a penal offense for any person or persons, except the owners thereof, to take possession thereof, sell or convert to his or their own use said logs or timber, punishable as in the fourth section of this act.

Penalty for convert-
ing logs, &c., carri-
ed away by winds
or current.

11. The company accepting the provisions of this act, shall set the fact forth in the agreement creating the company, required to be filed in the secretary of state's office, and when so set forth, and all the provisions of the code have been complied with in reference to the organization of joint stock companies,

When provisions of
act to apply to
company's organi-
zed under it.

the provisions of this act shall be conferred on and and apply to such company.

Limitation as to the commencement of operations.

12. If the President and directors of said corporation shall not commence operations within two years from the passage of this act, then the powers, privileges and franchises therein granted shall be forfeited and cease.

Commencement,

13. This act shall be in force from its passage.

CHAPTER CXCIH.

AN ACT providing for homesteads, and exemptions from forced sales of personal property in certain cases.

Approved December 29, 1873.

Be it enacted by the Legislature of West Virginia :

Homesteads; who may hold.

Value of.

Exempt from forced sales.

1. That any husband or parent residing in this state, or the infant children of deceased parents may hold a homestead of the value of one thousand dollars, and personal property to the value of two hundred dollars, exempt from forced sales, subject to the following regulations and provisions:

Exemption of certain personal property from distress or levy; in what cases.

2. Any person described in the preceding section may set apart of his personal property not exceeding two hundred dollars in value to be exempt from execution or other process in all cases where the claim or cause of action arose out of contract, except as hereinafter provided.

How and by whom claim of exemption made; proceedings thereon.

3. When a debtor claims personal estate exempt by this chapter he shall deliver to the officer holding the execution or other process a list by separate items of all the personal estate owned or claimed by him, including money, bonds, bills, notes, claims and demands, with the residence of the person against whom the said bonds, bills, notes, claims and demands are, and shall verify such list by affidavit,

which a fidavit shall be in the following form, or to the following effect: Form of affidavit.

I, A. B., do solemnly swear that the annexed list by me subscribed, contains a true and perfect list of all the personal estate of every kind owned or claimed by me.

A. B.

Which affidavit shall be taken before and certified by any person authorized to administer oaths, and any one swearing falsely, knowingly, shall be deemed guilty of perjury and upon conviction thereof shall be punished accordingly. He shall also deliver to such officer a list by separate items, of the property he claims as exempt. If the husband be absent or incapable of acting the claim may be made, the list delivered and the affidavit made by the wife, with the same effect as if made by the husband. If the creditor his agent or attorney demand an appraisal thereof, two disinterested householders of the neighborhood shall be chosen, one by the debtor and the other by the creditor, his agent or attorney, and these two if they cannot agree shall select a third; but if either party fail to choose an appraiser or the two fail to select a third, or if one or more of the appraisers fail to act the officer shall fill the vacancy. Before whom taken
Penalty for swearing falsely.
When claim may be made by wife for husband.
Appraisers, when and how appointed.

The appraisers shall forthwith proceed to make a list, by separate items of the personal estate selected by the debtor to the value of two hundred dollars as near as may be, affixing to each item the value they may agree on and annexing to the list their affidavit to the following effect: "We solemnly swear that to the best of our judgment the above is a fair cash valuation of the property therein described;" which affidavit shall be signed by two appraisers at least, and be certified by some person authorized to administer oaths. The list shall be delivered to the officer holding the execution or other process and be by him annexed to and made part of his return; and Duties and proceedings of appraisers.
Duties of officer having process.

the property therein specified shall be exempt from levy and sale and the other personal estate of the debtor remain subject thereto. The officer shall also annex as part of his return, the first list specified in this section ; and in case no appraisement be required he shall return the second list mentioned in said section in like manner. And any officer who shall sell any property so claimed as exempt after the provisions of this section have been complied with by the debtor or his wife, shall forfeit to such debtor three times the value of the property so sold, which forfeiture may be recovered in any court having jurisdiction in the case.

Forfeiture of officer
for selling exempt
property.

Pay of appraisers
by whom made.

4. The appraisers shall each be entitled to fifty cents, to be paid by the creditor if it appear that the property claimed by the debtor as exempt did not exceed two hundred dollars in value ; otherwise to be paid by the debtor.

Widow or minor
children of deced-
ed husband or pa-
rent may claim
exemption.

Proceedings on such
claim.

5. After the death of a husband or parent residing in this state, his widow or minor children, or such of them as there may be, may select personal estate of the deceased not exceeding two hundred dollars in value, and hold the same exempt from execution or other process for any debt contracted or liability arising out of contract incurred by the deceased in his life time. But the personal representative or any creditor of the deceased may have the personal estate so selected, appraised as prescribed in the last three sections, and with like effect ; and no greater amount than two hundred dollars of the personal estate of the deceased shall be exempt by virtue of this and the four preceding sections ; and if, during his life time he had himself set apart personal estate to be exempt from execution and other process, the same shall be subject thereto after his death so far as not selected as aforesaid by his widow and minor children, or such of them as there may be.

6. No exemption claimed under the provisions of this act shall affect or impair any claim for the purchase money of the personal estate in respect to which such exemption is claimed, or any claim for work or labor performed in a family as a domestic, or any voluntary lien on such estate given by the owner thereof, or any proceeding for the collection of taxes on county, district or township levies, or any debt created for funeral expenses, or any claim where the debtor is removing or about to remove his property out of this state with intent to defraud his creditors, or for rent due upon a lease which has not been due more than one year: Provided, That the voluntary lien above mentioned when given by a husband must be joined in by his wife, and acknowledged before the clerk of the county court by both, or before a justice of the peace, and by him certified to the clerk of said court, who shall in either case record the same, for which he may charge a fee of thirty-five cents.

No exemption allowed in certain cases.

Proviso as to voluntary lien given by husband.

7. The county court of the county, or judge thereof in vacation, or the county court on motion of the person aggrieved, may set aside any appraisement made as aforesaid, and order a new appraisement to be made and returned, and appoint appraisers for that purpose, and make such order respecting the costs as may be deemed just.

Appraisement, when and by whom set aside and order new appraisement.

8. Any husband or parent, residing in this state, or the infant children of deceased parents, may hold a homestead of the value of one thousand dollars exempt from forced sale: Provided, That such homestead exemption shall in nowise affect debts or liabilities existing on the twenty-second day of August, eighteen hundred and seventy-two; and provided further, that no property shall be exempt from sale for taxes due thereon, or for the payment of purchase money due upon such property, or for debts contracted for the erection of improvements thereon.

Homestead exemption.

Certain debts, &c. not affected by.

How and by whom
declaration of such
intention made.

9. Any husband or parent desiring to obtain the benefit of such homestead shall make a declaration of such intention, and therein describe with convenient certainty, such homestead, so that it may be distinguished from other property. If such husband or parent should die before making and recording a declaration of such intention, the same may be made by the widow, guardian of the infant children, or some person appointed by the circuit court or county court of the county for that purpose; which declaration of such intention shall be acknowledged before some officer authorized to take acknowledgments of deeds for record, which the party shall have duly recorded in the clerk's office of the county court of the county in which such homestead is situated, in a book to be kept for that purpose.

To be recorded by
first March next, or
lose benefit as to
debts contracted
before recording.

10. That no person, after the first day of March next, who has not made and had recorded such declaration of intention, shall have the benefit of such homestead as to debts contracted before the recording of such declaration.

Waiver of right to
claim benefit of
homestead; when,
how, and by whom
made.

11. Any such husband or parent, except a married woman, at the time of contracting a debt, may, in writing, waive the right to claim the benefit of such homestead as to such debt: Provided, In the case of a husband, his wife shall join him in such waiver, and their acknowledgment and her privy examination be taken and recorded as provided for in case of deeds of conveyance.

Proviso in case of a
husband.

Person removing
from State loses
benefit of home-
stead.

12. In case such husband, parent, or infant children, should remove from the state, the benefit of such homestead shall thereby be lost.

In case of death of
husband or parent,
to whom benefit of
homestead descends

13. In case of the death of a husband or parent, if it be the husband, leaving a widow, the benefit of such homestead shall descend to the widow and infant children of such deceased husband; and if there be no such widow, then to the said infant children, and be held free from the debts of such husband or

parent until all such children arrive at the age of twenty-one years.

14. Said infant children, during their minority, shall not by themselves or their guardian, waive the right to such homesteads: Provided, however, That nothing in this act shall be construed to prevent the widow of such husband or parent who may die, from her right of dower in the homestead to which such husband or parent was entitled.

Infant children not to waive right to homestead; proviso as to widow's dower.

15. Any person having the right to charge the homestead of such husband, parent or infant children with the payment of a debt or demand, shall have the right to institute his suit in a court of equity; and if he shall make it appear, that such homestead is of greater value than one thousand dollars at the time of the commencement of the suit, the court shall provide by decree or otherwise, for such creditor to have the benefit of the value of such homestead in excess of one thousand dollars.

Proceedings when homestead is chargeable with the payment of a debt and exceeds in value \$1,000.

16. This act shall be in force from its passage.

Commencement.

CHAPTER CXCV.

AN ACT to provide for opening and keeping in repair the county roads.

Approved December 22, 1873.

Be it enacted by the Legislature of West Virginia :

1. Every district in this state shall be a road precinct, unless the county court shall otherwise order: Provided, That the road precincts in each county shall remain as now established until changed by the county court.

Road Precinct.

Every district shall be one.

To remain as now established until changed by court.

County court may divide districts into convenient precincts; change boundaries, &c.

2. The county court of a county may divide the several districts therein into convenient road precincts, and may from time to time change the boundaries of such precincts and increase or diminish the number thereof. The precincts in each district shall be distinguished by consecutive numbers, and the boundary lines thereof shall be recorded in the proceedings of the court.

Precincts to be numbered and boundary recorded.

What incorporated cities, &c. not to be included in such precincts.

3. No road precinct shall include any part of an incorporated village, town or city, which by the provisions of its charter keeps its own roads, streets and alleys in order, notwithstanding anything to the contrary contained in the preceding sections.

Surveyors of roads.

When and how appointed.

Term of office.

Vacancies; how filled

4. The county court of every county, shall, biennially at the January, February or March term of said court, appoint a surveyor of roads for each precinct of their respective counties, who is a resident of the precinct for which he may be appointed, and whose term of office shall be for two years from the first of April succeeding his appointment. Vacancies in said office shall be filled by the county court from time to time, as they may occur, and shall be for the unexpired term.

Forfeiture for failure to serve.

Court may remit forfeiture.

5. If any person appointed such surveyor refuse to serve, he shall forfeit twenty dollars; but the county court of the county may, for good cause, remit such forfeiture; and a person who has served one term, may refuse to serve the next term without being subject to any penalty therefor.

Oath of office; when and how administered.

Where filed,

6. Within ten days after he is notified of his appointment and before entering upon the duties of his office, he shall take and subscribe the oath required by article four, section five of the constitution. Such oath may be administered by a justice of the county or any other person authorized to administer oaths generally, and when properly certified shall be filed in the clerk's office of the county court.

7. Every surveyor of roads shall perform the following duties within his road precinct, that is to say: He shall superintend the county roads and bridges, cause the same to be put in good order and repair, of the proper width, well drained and to be cleared and kept clear of rocks, falling timber, land slides and other obstructions. He shall cause to be opened and made all new county roads and alterations of former roads ordered by proper authority. He shall cause to be placed and kept at the fork or crossing of every county road a guide board, on which shall be stated in plain letters the most noted place to which each road leads. Across every stream where it is necessary and practicable, he shall cause to be placed and kept a sufficient bridge, bench or log, for the accommodation of foot passengers. Where any more important bridge is necessary and it is practicable for him to have it made with the money and labor which is at his disposal by virtue of his office, he shall cause it to be made safe and convenient and at least twelve feet broad with a railing not less than three feet high on each side. He shall notify or cause to be notified, all persons who are liable by law to work on the roads, of the time and place at which they are required to attend for that purpose, and shall direct and superintend their work. When a county road is suddenly obstructed at any time of the year by the falling of rock or timber, land slide or other cause, or a county bridge is from any cause rendered unsafe, he shall immediately order out such number of persons liable to work on the roads as may be necessary (notwithstanding such persons may have performed their full number of days' work on the roads,) and without avoidable delay cause such obstruction to be removed from the road or the bridge to be made safe.

Duties of surveyors of roads.

8. Every surveyor of roads shall keep an exact account of the number of days' work done on the road

Account to be kept; when to report the same.

in his precinct by each person liable to work thereon, and shall if required, make report thereof to the county court at any time during the year.

Annual report;
when made and
what to contain.

9. He shall also make report annually to the county court at the fiscal term thereof, of the condition of the roads and bridges in his precinct, the amount of money and labor expended thereon during the year ending on that day and the improvements, alterations and new works finished during the year or in progress; and shall recommend in such report any improvement, alterations, or new works which he thinks ought to be made, stating the probable cost thereof.

Books and papers
to be delivered to
successor.

Penalty for failure.

To pay over all
money to successor.

Liability for failure.

10. Every surveyor of roads shall deliver the books, accounts and papers pertaining to his office, to his successor when he shall demand the same. If he fail to do so he shall forfeit not less than thirty dollars. And every such surveyor now in office shall at the expiration of his term of office, pay over to his successor all the money in his hands by virtue of his office, taking duplicate receipts therefor, one of which shall be filed with the clerk of the county court. If he fail to do so he shall be liable for double the amount in his hands, to be recovered in the name of the county before any justice or court having jurisdiction.

Penalty on a sur-
veyor for neglect of
duty.

When not liable for
failure to perform
duty.

11. If a surveyor of roads fail to perform any duty required of him by law, and there is no other penalty prescribed therefor, he shall be liable to indictment or presentment and upon conviction thereof shall be fined not less than five nor more than thirty dollars for every such offense. But he shall not be liable for a failure to perform any duty specified in the seventh section, if it appear that the money and labor at his disposal by virtue of his office were insufficient to enable him to do so.

12. Every male person not under twenty-one nor

Handwritten:
and a receipt
7/18/119. —

over fifty years of age, who resides in any road precinct, and is not a pauper, having had at least three days' notice, shall between the first day of April and the first of November in each year, attend in person or by a sufficient substitute, with proper tools, and work on the county road in such precinct, under the direction of the surveyor thereof, at such places and on such days during the said period as the said surveyor may appoint, at least two days, if that number be necessary. And the county court of every county in which the said two days work shall be insufficient to open, construct and keep in good repair the roads and bridges thereof, shall prescribe by order of the court the manner in which the same shall be done, after expending thereon the two days' work aforesaid, whether entirely by a tax on property, entirely by labor, or partly by tax and partly by labor; and it shall prescribe, provide for and lay a sufficient amount of tax or labor, or both, as the case may be, to open, construct and keep in good repair the roads and bridges in their county during each year. Every person required by the county court under the provisions of this section to work on roads shall perform such additional number of days' work thereon as may be prescribed by such order.

Who liable to work on roads.

Notice.

Must attend, &c.

Work two days.

Where two days' work insufficient.

Duty of county court.

Additional labor.

The county court shall have power to transfer and require the surveyor and hands of any road precinct to work upon the roads of another precinct in the same district, when it shall appear that such precinct has a greater amount of road labor to be performed and less hands to perform such labor than the precincts from which such transfer is to be made. And any surveyor or hands failing to work on the roads of the precinct to which they may be, by order of the court transferred, shall be subject to the same penalties as if they had failed to work on the roads of their own precinct when lawfully required to do so.

Power of county court to transfer hands to other precincts.

Penalty for failure to obey order of court.

13. If any person fail to perform the labor required

Penalty for failure
to perform labor,
&c.

Duty of surveyor
to report failures,
&c.

Lists of failures,
how disposed of.

Amount due, how
and to whom
charged.

How accounted for.
Proceedings to col-
lect penalty.

Persons improperly
placed on said lists;
how released.

Application heard
and determined
without costs.

Moneys received.
how applied.

of him by the preceding sections he shall pay to the sheriff of the county one dollar and twenty-five cents as a commutation for each day's service; and he shall be deemed to have so failed, if, having attended at the place and day appointed, he refuse to obey any reasonable direction of the surveyor, or spend the time in idleness or inattention to the work assigned him. It shall be the duty of the surveyor, on or before the first day of November in each year, to duplicate lists of all persons who have so failed to work on the public roads in his precinct during the previous year, and who were properly notified, stating therein the number of days each person failed to work when required. One of the lists he shall deliver to the sheriff, and the other, after the sheriff shall have endorsed thereon his receipt for such delivery, he shall file with the clerk of the county court, to be by him preserved, and the amount thereby appearing to be due shall be charged to the sheriff and accounted for in his next annual settlement with the county, in the same manner as county levies are accounted for. If any sum charged in such lists be not paid to the sheriff within ten days from the time they are placed in his hands, such sheriff may distrain for the same in the same manner and with like effect as for state or county taxes. Any person claiming to be improperly placed on said lists, may apply to the county court to be released therefrom, within six months from the time such lists are placed in the hands of the sheriff, and if said court be satisfied that such person is erroneously charged with said road fine, the court shall release him from its payment. The application shall be heard and determined without costs. All money received by a sheriff under this section shall constitute a fund to be applied to the construction, improvement and repair of roads and bridges in the district in which it may be collected.

14. For the purposes of the twelfth section, the residence of any person who has a family shall be held to be where his family resides, and if he have no family, where he boards. The notice required by that section may be given by the surveyor in person or by any person under his direction and may be served on the person liable to work as aforesaid, or by leaving a written notice at his residence; and except in the last case, the notice may be either oral or in writing.

Residence of persons required to work on roads, how determined.

Notice, how given and by whom.

15. The surveyor of roads for any precinct, with the approval of the county court, may exempt from working on the roads in his precinct, any person he may think unable to perform such work and at the same time unable to pay the commutation. Such exemption must be in writing and shall not continue in force longer than one year from the date thereof.

Exemption by surveyor.

Who may be exempted, &c.

How done, &c.

16. Any person who has performed the work required by the twelfth section or paid the commutation therefor in any year in one road precinct shall not, if he remove into another precinct, be required during the same year to work on the roads or pay commutation therein.

Person removing from one precinct to another, when not required to work in the latter.

17. If any person under the direction of the surveyor perform more labor on the county roads of his precinct in any year than is due from him, the surveyor shall give him a certificate specifying the amount of extra labor so performed, which certificate shall be received for the amount specified in discharge of any labor or road tax within the same precinct, due in any subsequent year from the person to whom such certificate was given.

Extra labor in one year to be credited on the next.

Certificate in such cases.

18. The county court of the county may authorize the surveyor of any road precinct therein to hire so many laborers as with those liable to work on the roads in such precinct, and the money applicable thereto will suffice to put and keep the county roads

Powers of surveyors as authorized by county court.

and bridges therein in good order, and open and make such new county roads and alterations as may be ordered by proper authority. The court may also authorize him to purchase powder for the removal of obstructions in the roads; and tools and implements to be preserved and transferred from one surveyor to another as the court may direct. The surveyor shall return a particular account on oath, of all expenses so incurred, as also of the expenses of placing and keeping up guide boards as before mentioned, and such account when audited and allowed by the court shall be paid out of the county treasury.

May hire wagons,
horses &c., or im-
press them.

19. Whenever it may be necessary to have wagons, carts, ploughs or scrapers, draught oxen, mules or horses for making or repairing any county road or bridge, the surveyor may hire the same by agreement with the owner, or if he cannot so obtain the use thereof, may impress such of them as shall be necessary with their gear. The surveyor in either case shall allow a fair compensation to the owner for the use thereof, and if the surveyor and the owner do not agree as to the amount, each shall choose a freeholder of the district, and the two so chosen may if necessary select a third, to ascertain what would be a fair compensation to the owner for the use of the said property. The sum so agreed on or ascertained shall be paid by order of the court out of any money applicable thereto.

Compensation.

How ascertained.

How paid.

Power to take materials for repairing roads and bridges.

20. The surveyor of any road precinct may take from any convenient lands so much wood, stone, gravel or earth as may be necessary for constructing or repairing any county road or bridge in such precinct; and may for the purpose of draining any such road cause a ditch to be cut through any land adjoining the same. But such wood and other articles shall not be taken from, nor such ditch cut through any lot in a town or city without the consent of the owner. The surveyor shall if required, allow a fair

As to ditches and drains.

Exceptions as to lots in towns, &c.

compensation to the owner for the articles so taken Compensation therefor.
 or the damage done by cutting the said ditch; but if
 the surveyor and owner do not agree as to the amount How ascertained.
 the same shall be ascertained according to the pre-
 ceding section. The sum so agreed on or ascertained
 shall be paid by order of the court out of any money How paid.
 applicable thereto.

21. The surveyor may change any county road in Change of location of road, when and how made.
 his precinct with the consent of the owner of the
 land in which such change is made, provided such
 change does not increase the length or grade or re-
 quire more work to keep the road in repair or place
 the same on worse ground than it was before such
 change, or render the said road in any respect worse
 than it was before the change. Any surveyor who
 shall make such change otherwise than as prescribed Penalty for making such change unlawfully.
 by this section shall be guilty of a misdemeanor, and
 on conviction thereof shall be fined not less than ten
 dollars.

22. When the county court of any county shall de- It and tax: duty of county court as to levy of.
 cide to levy a tax in pursuance of the provisions of
 this act, it shall ascertain as nearly as possible the
 amount of money which will be necessary in each
 district in their county, together with the labor re-
 quired to be performed therein, to construct, put and
 keep in good repair the roads and bridges in such
 district and shall by an order entered in their jour-
 nal direct the assessor of the assessment district in Assessment: how made.
 which such district may be, to extend on the land
 and property books required to be made by said as-
 sessor a road tax on the real and personal property
 taxable in said district at such rate as may be speci-
 fied in such order or resolution, which levy shall be
 made upon the latest assessment thereof for state
 taxation. Such tax shall be a lien on the real and Lien of such taxes.
 personal property on which it is imposed in like
 manner and effect as county taxes, and shall be col- How collected and accounted for.
 lected by and accounted for by the sheriff in the same

How expended manner as county taxes are collected and accounted for. It shall constitute a road fund, to be expended on the order of the county court in the district in which it may be collected, in the construction and repair of the roads and bridges therein. For extending the road levy on the land and property books the court shall allow the assessor a reasonable compensation payable out of the county treasury, and for collecting said levy the sheriff shall be entitled to the same commission as for the collection of state taxes.

Compensation of

Commission of sheriff

When and how person assessed with road tax may discharge the same in labor.

23. If any person assessed with any road tax desire to pay the same, or any part thereof in labor, he shall work on the county roads or bridges in his district, if the same constitute but one road precinct, at such times and places as shall be appointed by the surveyor, or if there be more than one such precinct in the district, at such times and places as the county court may direct: Provided, That in case there be more than one road precinct in the district, and there be a necessity for the expenditure of such tax in the precinct where such person resides, then such labor shall be performed in that precinct. Such labor shall be performed in all cases under the direction of the surveyor, and the price thereof, when performed by an able bodied man as the law requires, shall be one dollar and twenty-five cents per day, or such other sum as may be fixed by the county court. When any such labor is performed by, or on behalf of any person assessed with such road tax, the surveyor within whose precinct such labor is performed, shall give the person performing such labor a certificate setting forth the number of day's and fractional parts of day's labor performed by such person, together with the money value thereof as prescribed by the foregoing rate, or at such rate as may be prescribed by the county court. The sheriff shall receive such certificate in discharge of any road tax with which

Per diem allowed

Certificate to be given by surveyor.

Duty of sheriff in relation to such certificate.

such person may be charged, to the amount specified in said certificate and the amount of such certificate shall be allowed to the sheriff in his settlement for the collection of the road tax. Any surveyor knowingly giving a certificate to any person charged with road tax for a greater amount than the labor actually performed, shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than ten nor more than one hundred dollars.

Amount to be allowed Sheriff in settlement.

Penalty on Surveyor for giving certificate for greater amount than is due.

24. Every surveyor of roads shall be allowed for his services such sum as may be fixed by the county court, not exceeding two dollars for every day necessarily employed by him in performing his official duties, and his own affidavit shall be received as prima facie evidence thereof; and such account when audited and allowed by the court shall be paid out of the county treasury; and if he is liable to work on the roads there shall be deducted from his compensation two days' work in every year and such other number of days as he may be required to work on roads by order of the county court.

Compensation of surveyor of roads.

How fixed and paid

His affidavit.

What to be deducted

25. When a bridge is necessary within a county or across the boundary thereof and it is not practicable for the surveyor of the road precinct to have it built or repaired with the means at his disposal, the county court of the county may contract for the same or any part thereof on such terms as may be agreed upon, and take bond and security from any contractor for the faithful performance of his contract and pay for the work in whole or in part out of the county treasury or by issuing bonds or other evidence of debt, for the same, as may be agreed upon. And to this end they may appoint one or more commissioners or a committee of their own body, to advertise for and receive proposals, and may make such other order in the premises from time to time as shall be necessary and proper. Upon the completion of any such bridge the court may charge and receive such reasonable

Powers of county court as to bridges.

When and how tolls may be charged. tolls thereon as they may from time to time **ordain** or establish, subject to the right of the legislature or **board of public works** to change the same.

Power of county court as to roads.

26. In like manner they may contract and pay for making, improving or keeping in order the whole or any part of any county roads within the county.

Power of contract or, for bridges between two counties.

27. When it becomes necessary to build or repair a bridge across any stream on a line between two counties, or to construct or keep in repair any road, or to connect any roads between two counties the county courts of such counties may enter into such arrangements therefor as to them shall seem best: but if they disagree in relation thereto, it shall be the duty of the county court of each county to appoint commissioners to meet and arrange the matter: and if they should disagree they shall call to their aid one or more commissioners from an adjoining county to assist them in their decision; and whenever a decision is arrived at, and is confirmed by the court of each county it shall be binding. If the county court of any county upon being required to do so, shall fail to appoint commissioners, or if either court shall fail in any respect to do on its part what should be done towards the work the remedy by mandamus shall lie before the circuit court of the county whose county court is complained of, on behalf of the court of the other county; and the circuit court shall compel the county court complained of to do what ought to be done in the matter.

Proceedings in case of disagreement.

When decision binding.

When appointment of commissioners may be compelled by mandamus.

Duty of circuit court in such cases.

Power of county court to subscribe for stock in incorporated companies.

28. When any joint stock company incorporated by this state shall have been formed to construct a road or bridge wholly or in part within any county, the county court of such county may subscribe for, take, hold and dispose of stock in such company under the regulations and subject to the restrictions prescribed by law.

29. The county court of a county may upon peti-

tion, permit gates to be erected across any county road therein or cause any gate erected across a county road to be removed; but notice of every petition for that purpose must first be posted at the front door of the court house and at three public places in the vicinity of the gate proposed to be erected or removed, at least three weeks before the meeting at which such order is made.

When and how gates may be erected or removed.

Notice in such cases.

30. The county court of a county may, upon petition, direct any county road or landing therein to be discontinued; but notice of every such petition must three weeks at least before it is acted upon, be posted at the front door of the court house and at three public places in every district in which any part of the said road or landing may be. Upon such petition after notice given as aforesaid, the county court shall appoint two or more viewers or a committee of their own body, to view such road or landing and report in writing whether in their opinion any, and if any, what inconvenience would result from discontinuing the same. Upon such report and other evidence, if any, the court may discontinue the road or landing; taking care in every case of an established post road not to discontinue the same until another has been established. But this section shall not apply to any turnpike road which has been or shall be transferred to any county by the state.

When and how roads or landings discontinued.

Notice in such cases.

Proceedings upon petitions.

Report of commissioners, &c.

Not to apply to roads transferred to counties.

31. Every county road heretofore established and opened pursuant to law and which has not been lawfully discontinued or vacated, shall continue as such, subject to the provisions of this chapter, until properly discontinued; and every road worked as a public road under the direction of a surveyor of roads, shall in all courts and places be deemed a public road. The roads, bridges and public landings transferred by the state to the several counties in which they are situated shall hereafter be regarded as county roads, bridges and landings.

Roads heretofore established to remain such.

Roads worked as public roads, deemed to be such.

Roads and bridges transferred to counties, deemed county roads.

Effect of alteration
of road.

32. When any road is altered the former road shall be discontinued to the extent of such alteration and no further, and the new one established.

What land con-
demned for landing.

Establishment of
road or landing in
incorporated town
&c.

83. Not more than two acres of land shall be condemned for any landing. And no road or landing shall be established by the county court of a county upon or through any lot in an incorporated village, town or city, without the consent of the council thereof.

Width of bridges
and roads.

Grade.

34. No bridge, unless it be exclusively for footmen, shall be less than twelve feet wide. Every road shall be thirty feet wide, unless the county court order it to be of a different width. The grade of any road to be hereafter established shall not exceed five degrees unless specially authorized by the county court of the county.

Roads, bridges and
landings, how es-
tablished or altered

35. When any person desires the establishment or alteration of a public road, bridge or landing in any county, or a private road for his own convenience, he shall petition the county court thereof for that purpose, setting forth in his petition specifically the nature and location of the proposed work; and the county court shall thereupon (and they may do so without such petition in any case in which they deem the interest of the people of the county requires it,) appoint two or more viewers or a committee of their own body, to view the ground and report the advantages and disadvantages which in their opinion, will result as well to individuals as to the public from the proposed work, and the facts and circumstances that may be useful to enable the court to determine whether such work ought to be undertaken by the county, stating specially in either case, whether it would be necessary to take any yard, garden, orchard or any part thereof, or to injure or destroy any building; the probable cost of the work in case of a public road; the names of the land owners whose property would have to be taken or injured; which of them requires

compensation and the probable amount to which each of them would be entitled. The viewers or committee may examine other routes or locations than that proposed, and report in favor of the one they prefer, with their reasons for the preference. They may employ a surveyor if necessary, who shall be allowed by the county court except in the case of a private road, a reasonable compensation not exceeding two dollars per day, to be paid out of the county treasury. Employment of surveyor; his pay. A map or diagram of the route or location shall be returned with the report. The report may be re-committed by the court with or without special instructions, to the same or other viewers or committee. Recommitment of report.

36. Upon the report if the court be against the proposed establishment or alteration, the petitioner shall pay all costs and expenses of the proceeding, to be ascertained by the clerk of the said court, When petitioner to pay costs. and if necessary execution may issue therefor. How costs ascertained. But unless the court upon such report decide against undertaking the proposed work, they shall appoint a day for hearing the parties interested and cause notice thereof to be given to the proprietors and tenants of the property which would have to be taken or injured, to show cause against the same. Hearing on petition &c. Such notice may be served on such of them as are found within the county, and on any agent therein of any proprietor not so found, or by posting a copy thereof on the front door of the court house for three weeks and by sending another copy by mail, postage paid, to the post office nearest his residence, if it be known, as to any party interested who is not found in the county. Notice to be given. How served.

37. At any time if the court have enough before them to enable them to ascertain what would be a just compensation to the proprietors and tenants, and such proprietors and tenants are willing to accept what the court deems just, the said court upon Where court can ascertain the compensation, &c., and it be accepted, it may undertake the work,

such acceptance being reduced to writing and signed by the proprietors and tenants, may determine to undertake the work.

Proceedings upon
hearing parties.

Decision of court.

Writ of
ad quod damnum
when issued and
executed.

Notice in such
cases; how served;
&c.

Proceedings upon
the inquisition.

38. When hearing the parties interested in an application for a public road, the county court shall decide for or against undertaking the proposed work on behalf of the county. If it decide in favor of the same and the compensation to be paid to any proprietor or tenant be not fixed by agreement, it shall award a writ of ad quod damnum, if desired by any proprietor or tenant, or if the court see cause for awarding the same. Such writ shall command the sheriff to summon and impanel a jury of twelve freeholders of the vicinage, not related to either party, to meet on the lands of such proprietors or tenants as may be named in the order and writ, at a certain place and day therein also specified, of which notice shall be given by the sheriff to such proprietors and tenants. Such notice shall be served like the previous process, except only that it need not be given to one present at the time of making the order.

39. The jury after being duly sworn by the sheriff shall view the lands of the proprietors and tenants so named, and ascertain what will be a just compensation to each proprietor and tenant so named for the land of his proposed to be taken, and for the damage to the residue of his lands beyond the peculiar benefits which will be derived in respect to such residue from the road or landing. And in the case of a road the jury if it be desired by any party interested, or be directed by the court, shall also ascertain whether the road will be one of such mere private convenience as to make it proper that it should be opened and kept in order by the person or persons for whose convenience it is desired, and whether a less sum, and if so what sum, will be a just compensation to any such proprietor or tenant in case he be permitted to erect and keep one or more gates across the road.

40. If the jury shall not be sworn on the day specified, or if they cannot agree upon their inquest, (in which case they may be discharged,) the sheriff shall execute the writ on such other day as he may from time to time appoint, notice thereof being given to the parties interested. If the inquest cannot be completed in one day the sheriff shall adjourn the jury from day to day until its completion. When completed it shall be signed by the jurors and returned by the sheriff, together with the writ.

Sheriff may postpone inquisition or adjourn it.

Inquest, how signed and returned.

41. When the record shows that the sum allowed by the jury as compensation to any proprietor or tenant is not more than the court before awarding the writ of ad quod damnum had consented to allow him, such proprietor or tenant shall be adjudged to pay the costs occasioned by such writ.

When postpone to pay costs of writ.

42. After the return thereof, the court shall, upon the report, request and other evidence, if any, determine whether the road or landing shall be established or altered as proposed, whether the road is to be opened and kept in order by the person or persons for whose convenience it is desired, and whether any proprietor or tenant shall be permitted to erect one or more gates across the road; and it shall be at the option of the court to pay the sum awarded or to abandon the proposed undertaking.

Action of court on: return of inquisition.

43. When the road or landing is established or altered the county shall be chargeable with the compensation to the proprietor or tenant, which shall be paid with such costs as the court may allow the applicant and the costs of the inquest, except in the case mentioned in the next section.

Expenses of road chargeable to county.

44. Upon hearing the parties interested in an application for a private road, the court shall grant such private road if it be made to appear that the same is necessary to enable the applicant to reach and enjoy his own property, and that the granting

Private roads; when and how established, &c.

Additional fencing
to be done by appli-
cant.

How and for what
time such road may
be used.

Duties of owner or
occupier of dams.

Penalty for failure.

In what cases
owners of dams to
build bridges.

Penalty for failure.

thereof will not entail irreparable injury upon the party through whose land the same will run. If the granting of any such private road shall render any additional fencing necessary, it shall only be granted upon the condition that the applicant shall, at his own expense, build and keep in good repair all such fences for such length of time as he shall use such private road. And upon the payment of the damages assessed therefor, and the completion of the fences aforesaid, if any, the applicant, his heirs or assigns, shall have the free use and enjoyment of the said private road to the same extent as if it were a public road, so long as he and they shall comply with the conditions, if any, upon which it was granted.

45. The owner or occupier of every dam shall, as far as any road passes over the same, keep such dam in good order, at least twelve feet wide at the top, and also keep in good order a bridge of like width over the pier-head, flood-gates, or any waste cut through or round the dam; and shall erect and keep in good order a strong railing on both sides of such bridge or dam. If he fail to comply with this section he shall pay a fine, for every twenty-four hours' failure, of two dollars. But the fine shall not, in any one prosecution, exceed fifty dollars, and where a mill dam is carried away or destroyed, the owner or occupier thereof shall not be thenceforth subject to such fine until one month after the mill shall have been put in operation. And every owner of a dam hereafter built, which dam, by the backing of the water or otherwise, or if any race or ditch connected therewith shall materially obstruct any public road, shall, whenever it may be necessary for the safe and convenient crossing of the same, or the pond created thereby, build and keep in repair over and across the said dam, pond, race or ditch, a bridge of like kind and description as is hereinbefore specified, and for any failure to do so, every such owner or occupier shall be fined as hereinbefore provided.

46. Any person owning land upon a water course ^{Erection of wharf, &c.} may erect a wharf on the same, or a pier or bulkhead in such water course opposite his land, so that the navigation be not obstructed thereby, and so that such wharf, pier or bulkhead shall not otherwise injure the private rights of any person. But the county court of the county in which such wharf, pier or bulkhead shall be, after causing ten days' notice to be given to the owner thereof of its intention to consider the subject, if it be satisfied that such wharf, pier or bulkhead obstructs the navigation of the water course or so encroaches on any public land- ^{When, how and by whom erected.} ing as to prevent the free use thereof, may abate the same.

47. Any person desiring the privilege of erecting a wharf at or on any public landing may present a pe- ^{When abated. How wharf erected at public landing.} tition to the court of the county for such privilege; but notice of the petition or of his intention to present the same, must be posted at the front door of the court house and three public places in the district in which it is proposed to erect such wharf, three weeks at least before the petition is acted on. The said court upon petition and notice, may grant such privilege upon such conditions and limitations, and fix such rates and charges for wharfage as it sees fit. But it may, at any time afterwards, upon ten days' notice to the owner of such wharf or his tenant, revoke such privilege or alter such conditions or limitations, or regulate the rates of charges. ^{When privilege may be revoked and charges regulated.}

48. Nothing contained in either of the last two sections shall be construed to authorize the erection of any wharf, pier or bulkhead within the limits of an incorporated town, village or city, without the consent of the council thereof. ^{Erection of in incorporated towns, &c.}

49. Nothing contained in this act shall be construed to take from the jurisdiction, charge or control of the council, trustees or other authority of any ^{Exceptions as to roads in towns.}

town, village, or city, so much of any road, bridge, landing or wharf, as by the laws now in force is under such jurisdiction, charge or control exclusively.

Right of way to timber and minerals, how obtained.

50. Any person owning land having timber upon it, or containing coal, ore, or other minerals, who desires to obtain a subteranean or surface right of way, by railroad or otherwise, under, through or over land belonging to another, or over any railroad, canal, state or county road, for the purpose of mining for such minerals, or conveying such timber or minerals to market, or for the purpose of drawing any coal or mineral lands under, through, or over lands belonging to another, or who desires to obtain land on or near a railroad, navigable stream or public road, for a place of deposit, sale and shipment of such timber or minerals, may make application therefor in the manner prescribed by law, and the proceedings thereon had shall be according to law.

Report of commissioners in such cases.

When not to be confirmed.

51. The report of the commissioners appointed pursuant to law to ascertain the joint compensation, to be paid for the property, to be taken or injured for the purpose mentioned in the preceding section shall not be confirmed and ordered to be recorded by the court unless from such report and the evidence in the case the court is of the opinion that the purpose for which the property is to be taken is of public utility, nor then, if it appear that the mansion house of any person, or the yard, garden or orchard, pertaining thereto, or any mill, warehouse, factory, store or shop, railroad, canal, state or county road, will be materially injured; and upon payment of the compensation

When right of way vests and to what extent.

so ascertained, within the time and manner prescribed by law for taking private property for public use; a right of way only shall be vested in the applicant, not to exceed fifty feet wide in any case, except as to the land condemned for such place of deposit, sale and shipment, (which shall in no case exceed one acre,) as to which the title shall be abso-

lutely vested, in the applicant, upon such payment. When the right is so vested in the applicant as to cross any railroad, canal, state or county road, he shall, at his own expense, make and arrange the said crossing so as not to interrupt, or in anywise to interfere with, the free use of such railroad, canal, state county or other road.

Applicant to pay expenses.

52. In the following sections of this chapter, unless a different construction is required by the context, the word "road" includes any state or county road, turnpike or road owned by a company, or person, and the Cumberland road, and the word "bridge" any state or county bridge, owned by a company or person.

What included in words "road" or "bridge."

53. Any person who shall kill a tree and leave it standing within the distance of fifty feet from a road; or without lawful authority shall knowingly and willfully break down, destroy, injure or obstruct any bridge or any bench or log placed across a stream for the accommodation of travelers; or destroy, injure, deface or alter any guide board, mile stone or mile post; or obstruct or injure any road or any ditch made for the purpose of draining a road, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten nor more than fifty dollars.

Penalties for obstructing road, &c.

54. Any person who shall drive or ride on or over a bridge faster than a walk shall be fined five dollars. The county court of any county may prescribe by an order what number of stock of any kind may be driven over any bridge within their county at any one time; but in every such case they shall cause a printed copy of such order to be kept posted in a conspicuous place at every bridge to which the same is applicable. Every person violating any such order posted as aforesaid, or who shall tear down, alter or deface the same, except when ordered by such

For fast driving over bridge.

Number of stock to be driven over and how

Posting of order.

Penalty for violation of.

court to do so, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten nor more than fifty dollars.

Fines, how paid and applied.

55. The fines incurred under the last two sections shall, in the case of a county road, bridge or work be to the county court of the county and be paid and applied as provided in the fifty-eighth section; in the case of a road, turnpike or bridge owned by a company or person shall be to such company or person; and in the case of the Cumberland road or any state work shall be to the state.

Duty of driver of vehicle on meeting or overtaking another.

56. Any driver of a vehicle meeting any other vehicle on a road or bridge shall seasonably drive to the right if the width thereof will permit, so that they may pass each other without interference. And when a vehicle is overtaken by another vehicle the driver of which desires to pass the other, the driver of the former upon being informed of such desire, shall bear to the right, and the driver of the latter to the left until the latter shall have passed. Any driver failing to do so shall forfeit two dollars.

Penalty for failure.

Horse racing on road or bridge, penalty for.

57. If any horse race be run on any public road or bridge, the rider of any horse in such race, the owner of any such horse if he consent to such race, and every person who shall bet on such race shall be fined not less than ten dollars.

Imposition of fine not to bar action.

58. No fine imposed by this chapter shall bar any action for damages or breach of contract. Except where it is otherwise specially provided, all fines imposed shall be to the county court of the county, and be paid to the sheriff of the county, to be applied to the construction, improvement and repair of county roads, bridges and landings in the district in which the offense was committed.

Fines to whom paid and applied.

Duty of railroads obstructing public road.

59. Every railroad company heretofore or hereafter incorporated which has by the building of their road or otherwise obstructed, or shall hereafter ob-

struct any public road, shall as far as possible, put the road so obstructed in as good condition at every crossing of said railroad as it was before the obstruction.

60. Any person who sustains an injury to his property or person by reason of a public road or bridge being out of repair may recover all damages sustained by him by reason of such injury, in an action on the case brought in any court of competent jurisdiction against the county in which such road or bridge is. The summons in such case shall issue against the county by name, and may be served in the precinct of the county court or the clerk thereof. If judgment be for the plaintiff in any such suit, the county court shall at the next annual fiscal term of said court levy upon the taxable property of the district in which such injury may have been sustained, a sufficient amount to pay such judgment. The amount so levied shall be collected by the sheriff as other district taxes are collected; and it shall be the duty of such sheriff to pay such judgment from the proceeds of such levy as soon as he receives a sufficient amount for that purpose: Provided, That if such road or bridge be in any incorporated city, town or village and under the jurisdiction of the corporate authorities thereof, then such recovery may be had against such corporation. And it shall be the duty of the proper authorities of such corporation to levy and collect a sufficient tax to pay the judgment in such case and to pay the same as soon as such tax is collected.

Recovery of damages for injuries on roads or bridges. County liable.

Proceedings in such cases.

How and when paid.

Provide as to roads and bridges in incorporated towns, &c.

61. Any person who may be injured as aforesaid by reason of a township road or bridge belonging to any company or person or to any county in its corporate capacity, being out of repair, may recover all damages sustained by him by reason of such injury, in the manner prescribed in the preceding section,

Redress for injuries on roads or bridges belonging to companies, &c.

against any such company, person or county, or against the lessee for the time being of any such road or bridge. Any judgment against a city, town village or county, under this or the preceding section may be enforced by the circuit court by writ of **mandamus**.

How judgment enforced.

62. The words "county court" wherever it may occur in this chapter, shall be held to include the board of commissioners or other tribunal established or that may hereafter be established in any county in lieu of a county court so far as the words "county court" relate to the management of the police and fiscal affairs of the county.

What included in "county court."

Commencement.

63. This act shall be in force from its passage.

CHAPTER CXCV.

AN ACT to amend and re-enact sections ten, fifteen, nineteen, twenty-two and twenty-three of chapter ninety-three of the code, concerning the assignment of lands under lease; the notice to terminate a tenancy; the recovery of rent and right to re-entry.

Approved December 23, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections ten fifteen, nineteen, twenty-two and twenty-three of the code be amended and re-enacted so as to read as follows :

Code amended.

"10. Rent may be distrained for within one year after the time it becomes due, and not afterwards, whether the lease be ended or not. The distress shall be made by any sheriff or constable of the county wherein the premises yielded the rent, or some part thereof, may be, or the goods liable to dis-

Rent, when and how distress for ay, be made.

treas may be found, under a warrant from a justice, founded upon the affidavit of the person claiming the rent, or his agent, that the amount of money or other thing to be distrained for, (to be specified in the affidavit,) as he verily believes is justly due to the claimant for rent, reserved upon contract from the person of whom it is claimed."

"15. Where goods are distrained or attached for rent reserved in a share of the crops, or in anything other than money, the claimant of the rent, having given the tenant ten days notice, or if he be out of the county, having set up the notice in some conspicuous place on the premises, may apply to the court or justice, to which the attachment is returnable, or to the county court of the county, in which the distress is made, to fix the value of such rent. Upon such application, the court or justice having ascertained the value, either by its own judgment, or if either party require it, by the verdict of a jury, (if it be in a county court,) impaneled without the formality of pleading, shall order the goods distrained or attached to be sold to pay the amount so asserted."

Distress; where rent is payable otherwise than in money; proceedings thereon.

"19. If the owner of such lands, or any person having right or claim thereto, shall, within the time aforesaid, file his bill for relief in the circuit or county court of the county wherein the lands are situated he shall not have or continue any injunction against the proceedings at law on the ejectment, unless he shall within thirty days next after a full and perfect answer filed by the plaintiff in ejectment bring into court or deposit in some bank within the state to the credit of the cause, such money as the plaintiff in ejectment shall, in his answer, swear to be due and in arrear over and above all just allowances, and also the costs taxed in the suit, there to remain till the hearing of the cause, or to be paid out to the said

Landlord's proceedings in ejectment.

What money to be paid and when before stayed.

plaintiff on good security, subject to the decree of the court.

His liability for what is made on premises while in possession.

And in case the bill shall be filed within the time aforesaid, and after execution executed the said plaintiff shall be accountable for no more than he shall really and bona fide, without fraud, deceit, or willful neglect, make of the premises from the time of his entering into the actual possession thereof; and if it should be less than the rent payable, then the possession shall not be restored until the plaintiff be paid the sum which the money so made shall fall short of the rent for the time he so held the lands."

Actual re-entry.

Written act of, to be returned. To whom.

To be recorded.

Certificate thereof, to be published.

How proved.

Duty of clerk thereon.

Effect of as evidence.

Fee of clerk and tax to be collected.

"22. When actual re-entry shall be made, the party by or for whom the same shall be made, shall return a written act of re-entry, sworn to by the sheriff or other officer acting therein, to the clerk of the county court of the county wherein the lands or tenants shall be, who shall receive the same in the deed book, and shall deliver to the party making the re-entry a certificate setting forth the substance of such written act, and that the same had been left in his office to be recorded; which certificate shall be published at least once a week for two months successively, in some newspaper published in or nearest to such county; which publications shall be proved by affidavit to the satisfaction of the said clerk, who shall note the fact in the margin of the record book, against the record of the act of re-entry in the words "Publication made and proved according to law; A. B., clerk;" and shall return the original act of re-entry to the party entitled thereto. Said written act of re-entry when recorded and the record thereof or duly certified copy from such record shall be evidence in all cases of the facts therein set forth.

"23. The clerk shall be paid for recording, granting certificate and noting publication, as aforesaid one dollar and fifty cents, and shall collect and ac-

count for the same tax upon every such act of re-entry offered for record, as shall then be levied by law upon deeds of conveyance."

2. This act shall be in force from its passago.

Commencement.

CHAPTER CXCVI.

AN ACT to amend and re-enact section four of an act entitled "An act to establish a county court and a board of commissioners for the county of Ohio, under the thirty-fourth section of the eighth article of the constitution of the State of West Virginia," approved December 21, 1872.

Approved December 23, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section four of an act entitled "An act to establish a county court and a board of commissioners for the county of Ohio, under the thirty-fourth section of the eighth article of the constitution of the State of West Virginia," approved December 21, 1872, be and is hereby amended and re-enacted so as to read as follows :

Act amended.

"4. There shall be four sessions of said court in each year for the trial of jury and other causes, and for the hearing and transaction of all chancery and other business within its jurisdiction, commencing on the first Mondays of March, June, September and December, to which terms grand and petit juries shall be summoned to attend as at the terms of Ohio circuit court for said county.

Four sessions in each year for jury trials and chancery business, &c.

Commencement.

Juries to be summoned.

CHAPTER CXCVII.

AN ACT to amend and re-enact chapter one hundred

and twenty-three of the code of West Virginia and to repeal chapter one hundred and nine of the acts of 1872-3, entitled "An act providing in what counties suits may be brought," approved April 5, 1873.

Approved December 23, 1873.

Be it enacted by the Legislature of West Virginia :

Code amended.

That chapter one hundred and twenty-three of the code of West Virginia is hereby amended and re-enacted so as to read as follows :

Actions at law and suits in equity: where brought.

1. Any action at law or suit in equity, except where it is otherwise specially provided, may be brought in the circuit or county court of any county :

First. Wherein any of the defendants may reside ; or,

Secondly. If a corporation be a defendant wherein its principal office is, or wherein its mayor, rector, president or other chief officer resides ; or

Thirdly. If it be to recover land or subject it to a debt, or be against a debtor who resides without, but has estate or debts due him within this state, wherein such land estate or debts or any part thereof, may be ; or

Fourthly. If it be on behalf of the state in the name of the attorney general or otherwise wherein the seat of government is ; or

Fifthly. If a judge of a circuit court be interested in a case which, but for such interest would be proper for the jurisdiction of his court, the action or suit may be brought in any county in an adjoining circuit.

In what county.

2. An action may be brought in any county wherein the cause of action or any part thereof arose, although none of the defendants may reside therein.

Jurisdiction of writs of mandamus, prohibition and certiorari.

3. Jurisdiction of writs of mandamus, prohibition and certiorari, (except such as may be issued from the supreme court of appeals,) shall be in the circuit or county court of the county in which the record or

proceeding is to which the writ relates. Any such writ may be awarded either by the circuit court or (in vacation) by the judge thereof, or by the county court. How awarded.

4. Chapter one hundred and nine of the acts of 1872-3, entitled "An act providing in what county suits may be brought," approved April 5, 1873, is hereby repealed. Chapter 109 acts 1872-3 repealed

5. This act shall be in force from its passage. Commencement.

CHAPTER CXCVIII.

AN ACT requiring certain officers to make annual settlements and providing for the confirmation and recordation of the same, and force and effect thereof.

Approved December 26, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sheriffs and all other officers, whether state, county, district or municipal, who shall collect or receive, or whose official duty it is or shall be to collect, receive or pay out any money belonging to or which is or shall be for the use of the state or of any county, district or municipal corporation, shall make an annual account and settlement therefor on or before the first day of June. Annual settlement by sheriffs and other officers. When made.

2. Such settlement shall be made for all moneys for the use of the state with the auditor in the manner now prescribed by law, and the entry thereof on the books of the auditor, shall be deemed a recording of the same and shall have the force and effect now prescribed by law. And for moneys for the use of a county, district or municipal corporation, with two commissioners of the county one of whom at least shall have been appointed by the circuit court. With whom such settlements to be made. When and how with auditor. Force and effect of such settlement when recorded. When with commissioners of county.

What such settlement shall show &c.

Subject to exceptions,

By whom made.

If sustained, settlement to be modified, &c., and confirmed.

Deemed prima facie correct.

When recorded.

Penalty on officer for failure.

How recovered.

Commencement.

3. Such settlement shall show the several items of receipts and disbursements and when made shall be laid before the county court and shall be subject to exceptions made by order of the court, or prosecuting attorney, or any tax payer of the county, and they shall be heard and determined by the said court; and if any of them be sustained the settlement shall be modified and reformed accordingly, and shall then be confirmed, and shall prima facie be deemed correct and shall be recorded in the office of the clerk of the county court in a book to be kept for that purpose.

4. If any such officer shall fail to make such settlement and within the time required by this act, he shall forfeit all right to commission or compensation on any such money and shall moreover, be subject to a fine of not less than one hundred dollars nor more than five hundred dollars for the use of the school fund, to be recovered in the name of the state upon ten days' previous notice in the circuit or county court of the county in which such officer qualified.

5. This act shall take effect from its passage.

CHAPTER CXCIX.

✓ AN ACT amending and re-enacting section three of chapter one hundred and sixty of the code, concerning writs of error.

Approved December 26, 1873.

Be it enacted by the Legislature of West Virginia:

Code amended.

1. That section three of chapter one hundred and sixty of the code, concerning writs of error, be and the same is hereby amended and re-enacted so as to read as follows:

"3. A writ of error shall be in a criminal case to the judgment of a circuit court from the supreme court of appeals. It shall also lie in a criminal case to the judgment of a county court, from the circuit court of the county wherein the judgment was rendered. It shall lie in any case for the accused, and if the case be for the violation of a law relating to the revenue, it shall lie also for the state.

Writ of error; in what cases writ lies.

CHAPTER CC.

AN ACT to amend and re-enact sections four and eight of chapter eighty-six of the code, concerning duties of personal representatives as to real estate and the liability of such estate for the decedents debts.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections four and eight of chapter eighty-six of the code be amended and re-enacted so as to read as follows:

"4. Such assets so far as they may be in the hands of the personal representative of the decedent, may be administered by the court in whose clerk's office there is or may be filed, a report of the accounts of such representative and of the debts and demands against the decedents estate; or they may in any case, be administered by a court of equity."

Assets in hands of personal representative.

How administered.

"8. No decree for the distribution of the proceeds of the real estate of such deceased person among his creditors shall be made until a notice to such creditors to present and force their claims shall have been published and posted as hereafter provided, which

No decree of distribution of proceeds of real estate, to be made till notice given, &c.

notice shall be in the following form, or to the same effect :

NOTICE TO CREDITORS.

To the creditors of A—— B——, deceased :

Form of such notice.

In pursuance of a decree of the —— court of the county of ——, made in a cause therein pending, to subject the real estate of the said A—— B—— to the payment of his debts, you are required to present your claims against the said A—— B—— for adjudication to C—— D——, commissioner, at his office in the said county, on or before the —— day of ——.

Witness, E—— F——, clerk of said court, this —— day of ——.

E—— F——, clerk."

Such notice shall be published in some newspaper published in the county for four consecutive weeks, or in the discretion of the court by posting written cards at the front door of the court house of said county, and at five of the most public places in the town or district where the said decedent resided at the time of his death, at least four weeks before the making of said decree. And the court may direct such other notice to be given as it deems necessary."

When, where and for what time to be published, and posted.

Commencement.

2. This act shall be in force from its passage.

CHAPTER CCI.

AN ACT making the certificate of clerks of county courts evidence in certain cases.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia:

1. That the certificate of the clerk of any county court of the entry or non-entry of any tract of land for taxation on the books of the commissioner of the

revenue or assessor of any county wherein the land ought to have been charged or of the delinquency of any such land for the non-payment of taxes charged thereon, and the amount of the taxes charged as delinquent shall in any suit in relation to such lands be prima facie evidence of what is stated in such certificate: Provided, it be filed with the papers of said suit and notice thereof given to the opposite party or his attorney, at least twenty days before the first day of the term at which it is to be offered as evidence. When a certificate purports to be signed by any such clerk, it may be admitted as evidence without proof of his signature.

Certificate of clerk of county court of entry or non entry of land for taxation on books of commissioner or assessor, or of delinquency of such lands for non-payment of taxes charged thereon &c. Shall be prima facie evidence in any suit relating to such lands.

Provide as to such certificate.

May be admitted without proof of signature.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CCII.

AN ACT vacating the office of justice of the peace by his accepting or continuing in the office of deputy sheriff.

Approved December 26, 1873.

Be it enacted by the Legislature of West Virginia :

1. That a justice of the peace accepting the office of deputy sheriff and qualifying as such, or continuing the duties of such office where he has already qualified, shall thereby vacate his office as a justice of the peace.

Accepting or continuing in office of deputy sheriff. Vacates office of justice.

2. This act shall be in force from and after its passage.

CHAPTER CCIII.

AN ACT to amend and re-enact section one of chapter forty-nine of the acts of 1872-3, entitled "An act to amend and re-enact sections one and six of chapter one hundred and fifty-seven of the code,



concerning grand juries," approved March 13, 1873.

Passed December 26, 1873.

Be it enacted by the legislature of West Virginia :

Acts 1872-3 amended

1. That section first of chapter forty-nine be amended and re-enacted so as to read as follows :

Grand juries.

To attend each term of circuit court.

May be summoned at special or adjourned term of said court, &c.

To attend such term of county court for trial of causes as court may direct.

May be summoned to attend another such term during the year.

"1. That there shall be a grand jury at each regular term of a circuit court, and it shall be lawful for said court, at a special or adjourned term thereof, whenever it shall deem it proper to do so, to order a grand jury to be summoned to consider any offense against the laws, whether the same shall have been committed before the next preceding term of said court or not, and whether the accused shall have been held for trial or not prior to the next preceding regular term. There shall be a grand jury summoned to attend such term of the county court held for the trial of causes as the court may at any such term direct, and there may be a like grand jury summoned to attend another of such terms during the year if the court at any such term deems it necessary."

Commencement.

2. This act shall be in force from its passage.

CHAPTER CCIV.

AN ACT to amend and re-enact sections eleven and twelve of chapter seventy-eight of the code concerning descents and distributions.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia :

as amended.

1. That sections eleven and twelve of chapter seventy-eight of the code be amended and re-enacted so as to read as follows :

"11. When any provision for a wife is made in

the husband's will, she may within one year from Renunciation of will. the time of the admission of the will to probate, renounce such provision. Such renunciation shall be By widow, when and how made. made either in person before the court where the will is recorded, or if recorded by a recorder then in the clerk's office of the county court of such county, or by a writing recorded in the clerk's office of the county court of such county, upon such acknowledgment or proof as would authorize a deed of conveyance to be admitted to record. If such renunciation be made or if no provision be made for her in the will, she shall have such share of her husband's real and personal estate as she would have had if he had died intestate leaving children; otherwise she shall have no more thereof than is given her by the will. Effect of, or her rights in husband's estate. A husband may in like manner renounce a provision made for him in the will of his wife, and in such case, or if no provision for him be made in the will, he shall have such share of his wife's estate, real and personal, as he would have had if she had died intestate leaving children; otherwise he shall have no more thereof than is given him by the will. By husband, when and how made. What portion of wife's estate goes to him in such case.

"12. The foregoing provisions in favor of the husband and the wife are all subject to this qualification, that if the husband would be barred of his courtesy in the estate of his wife, or the widow would be barred of her dower in the estate of her husband under any provision at law, neither shall have any part of the estate of the other, unless the same be given him or her by will, and then only so much as is so given." When husband is barred of courtesy, or wife of her dower, can only take what may be given by will.

2. This act shall be in force from its passage. Commencement.

CHAPTER CCV.

AN ACT directing the auditor to pay for enrolling

the militia and discontinuing the enrollment hereafter.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia :

Auditor authorized to pay assessors for enrolling militia.

Amount therefor appropriated.

Further enrollment of militia discontinued.

Commencement.

1. That the auditor be and he is hereby instructed to pay upon proper proof, any sums remaining unpaid to any assessor of the state for enrolling the militia of the several counties for the years 1870, 1871, 1872 and 1873, and the money necessary for making said payments is hereby appropriated.

No other or further enrollment of the militia shall be made.

2. This act shall be in force from its passage.

CHAPTER CCVI.

✓ AN ACT to amend and re-enact section nine of chapter one hundred and thirty-one of the code concerning the court docket, inquiry of damages, trial by jury, and judgments and decrees of the court for money.

Approved December 26, 1873.

Be it enacted by the Legislature of West Virginia :

Code amended.

1. That section nine of chapter one hundred and thirty-one of the code, be amended and re-enacted so as to read as follows :

Bill of exceptions."

May be taken to opinion of court.

When judges or president and justices must sign it.

"9. In the trial of a case at law, in which an appeal, writ of error or supersedeas lies to a higher court, a party may except to any opinion of the court, and tender a bill of exceptions, which, (if the truth of the case be fairly stated therein) the judge, or president and justices, or the greater part of those acting, shall sign, and it shall be a part of the record of the case. If any judge refuse to sign such bill of

exceptions he may be compelled to do so, by the ^{How compelled to do so.} supreme court of appeals by mandamus; and the circuit court may in like manner compel a county court, to sign a bill of exceptions. A party may ^{When exceptions need not be taken.} avail himself of any error appearing on the record, by which he is prejudiced, without excepting thereto."

2. This act shall be in force from its passage.

Commencement.

CHAPTER CCVII.

AN ACT to amend and re-enact sections one, fifteen and sixteen of chapter sixty-five of the code. ✓

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia:

1. That section one of chapter sixty-five of the code of West Virginia, be and the same is hereby amended ^{Code amended.} and re-enacted so as to read as follows :

"1. A widow shall be endowed of one third of all the real estate whereof her husband or any other to his use was at any time during the coverture, seized of an estate of inheritance unless her right to such dower shall have been lawfully barred or relinquished." ^{Dower, of what a widow may be endowed.}

2. Section fifteen of said chapter shall be and is hereby amended and re-enacted so as to read as follows : ^{Cx de amended.}

15. If a married woman die seized of an estate of an inheritance in lands, her husband shall be tenant by the courtesy in the same." ^{Courtesy of husband in lands of his wife,}

3. The sixteenth section of the said chapter of the code shall be and is hereby amended and re-enacted ^{Cole amended.} so as to read as follows :

"16. If any estate, real or personal, be delivered by

When husband
barred of his cour-
tesy and inheri-
tance.

the wife to the husband in lieu of his courtesy and he accept the same, he shall be barred of his courtesy in the residue thereof. And if a husband of his own free will shall leave his wife, except for cause such as would entitle him to a divorce, he shall be barred of his courtesy and of his inheritance in his wife's estate unless she afterwards become reconciled to and live with him as his wife."

Commencement.

4. This act shall be in force from and after its passage.

CHAPTER CCVIII.

AN ACT to amend and re-enact sections twenty-seven and twenty-eight of chapter fourteen of the code relating to reports of officers, boards, etc., and to add section thirty to said chapter.

Approved December 26, 1873.

Be it enacted by the Legislature of West Virginia:

Code amended.

1. That sections twenty-seven and twenty-eight of chapter fourteen of the code of West Virginia, be amended and re-enacted so as to read as follows:

Bi-ennial messages
and reports of gov-
ernor to the legisla-
ture.

Number of copies
to be printed, and
how disposed of.

"27. Of his bi-ennial message and any document which the governor may deem essential to accompany the same, he shall cause thirty-six hundred copies to be printed if practicable, before the beginning of the session; five hundred of the said message and two hundred of said accompanying documents to be disposed of as he may order; seven hundred of each to be delivered to the clerk of the senate and eighteen hundred to the clerk of the house of delegates, for the use of those branches respectively; three hundred copies of the reports of the executive officers (other than the governor,) and of the reports of boards and institutions, to be delivered

to the officer, board or institution whose report it is to be disposed of by them respectively, and the residue to be disposed of as directed in the following section. These documents must be delivered to the governor by the contractor for public printing or binding as the case may be, to be by him distributed as aforesaid."

Documents to be delivered to governor and distributed by him.

"28. The bi-ennial reports of public officers, boards and institutions required by law to be transmitted by the governor to the legislature, shall include the two preceding years, and be furnished to the governor as soon as practicable after the close of the last fiscal year, or at least ten days preceding each regular session of the legislature. The governor (with the assistance of the secretary of state,) shall select such portions of each report as may be necessary to be communicated for the information of the legislature, omitting all unimportant or improper matter so as to reduce the printed report to a reasonable length and proper form, and shall cause six hundred copies to be forthwith done up in pamphlet form with paper covers, (each pamphlet to contain a copy of the bi-ennial message of the governor,) of which pamphlets one hundred shall be disposed of as the governor may order, and one hundred and forty to be delivered to the clerk of the senate and three hundred and sixty to the clerk of the house of Delegates for the use of their respective branches."

Biennial reports of public officers, boards, &c. to be transmitted to governor.

What to include.

What to be furnished.

Duty of governor in relation thereto.

Number of copies to be printed in pamphlet form.

To contain message.

How disposed.

Be it further enacted :

"30. That the subordinate officers of the executive department shall keep an account of all moneys received or disbursed by them respectively, from all sources, and for every service performed and make a semi-annual report thereof to the governor on the first day of April and the first day of October of each year, under oath or affirmation, and any officer who shall willfully make a false report shall be deemed guilty of perjury."

Subordinate officers of executive department.

Account to be kept by.

To make semi-annual report to governor.

When.

Penalty for willfully making false report.

Commencement.

2. This act shall be in force from and after its passage.

CHAPTER CCIX.

AN ACT concerning turnpike roads; when and how tolls shall be collected; authorizing gates to be erected; prescribing the penalties for passing gates without paying tolls and making regulations concerning said roads, and prescribing penalties for failing to keep the same in repair.

Passed December 25, 1873.

Be it enacted by the Legislature of West Virginia :

Turnpike roads, &c.
Width of bridges
on &c.

1. That every turnpike road shall be of the width prescribed by the act of its incorporation, bridges shall be made where necessary and all the works of the company kept in good repair.

Company to place
milestones.

Distances to be
designated by let-
ters and figures.

Proviso.

3. The company shall place along its work mile-stones or posts whereon the distance from and to some well known points, or from and to the begin-ning and end of the road, shall be plainly denoted by letters and figures: Provided, That initial letters may be used to denote the places to and from which the distances have been measured.

May erect toll gates.

Demand and re-
ceive tolls.

Exception.

3. Every turnpike company may erect toll gates on their road and demand and receive tolls on every person and from the owner of every thing passing over such road through the gates aforesaid, except when the said road or bridges shall be out of repair.

Complaint of sec-
tion being out of
repair; proceedings
thereon.

4. Any person alleging that any section of five miles or any part thereof is out of repair, may apply to the county court of the county wherein the sec-tion or any part thereof is situated, for a suspension of the tolls until the same shall be put in repair, and

the court upon hearing the allegations and the proof thereon offered, if any, shall determine whether the tolls herein authorized shall be exacted or whether the tolls shall be suspended until the road shall be put in repair, and the president of the county court may suspend the payment of tolls for the reasons aforesaid until the next meeting of the court thereafter, and the said president of the county court shall bring the attention of the court to the same.

All tolls upon any section so pronounced by the court not in good repair, shall be suspended from the time of such decision until such specified time as the court may direct and fix by its order.

Tolls suspended on section out of repair.

5. The following tolls may be received on a section of five miles of a turnpike road, and for a fractional part of a section tolls may be exacted and received, bearing the same proportion to the tolls of a full section that such fractional part bears to such full section, whether such person or thing shall have passed over the full or fractional part of a section, to-wit: For a single horse, mare, gelding, mule, jack or jennet, if there be a rider thereon, five cents, and if led or driven, three cents; for a two wheeled riding carriage, seven cents; for a four wheeled riding carriage, coach, stage or other vehicle, ten cents, if drawn by one horse and if drawn by two, three cents for each additional horse; for a cart or wagon if the tires of the wheels are not more than four inches wide seven cents, and three cents for each animal drawing it; and if such tires be more than four and less than six inches three cents for every horse drawing it, and if such tires exceed six inches, two cents for every horse drawing it. For every sheep or hog one-fourth of one cent; for cattle, one half of one cent for every such animal; Provided, That these tolls shall not apply to turnpike roads where the same are now let by contract, where the tolls are received for keeping them in repair, until such contract has expired, unless by consent of the county court of the

Rates of tolls on turnpikes.

Provided as to turnpike roads let to contract, &c.

Exemption from
tolls

county who may apply the above rates in whole or in part, as the right may appear, after notice of an application has been previously made by posting the same at three of the most public places on the particular. All coaches, carriages, vehicles and horses used by persons going to and returning from divine worship or funerals, shall be exempt from tolls. And the county court of the county in which such section of road may lie whenever such court shall exercise jurisdiction over such road may in its discretion exonerate all mail carriers and persons going to and returning from mills on horseback, from the payment of tolls.

Tolls may be re-
duced or augmented

6. Every turnpike company and every county court controlling such company may reduce or augment the tolls on such road on any or all the subjects named in this act and prescribe tolls on subjects not named: Provided, That the augmentation shall not exceed double the rates prescribed and the reduction shall not be at a rate less than one half of that prescribed.

Proviso as to such
reduction or aug-
mentation.

Suspension and con-
trol of turnpikes.

How exercised.

7. The supervision and control of every turnpike road shall be exercised by the county court of the county in which the same or any part thereof may be situated; and this supervision shall extend as well to the tolls under the limitations of this act as to the entire road, whether in or out of any city, town or village. And the county court of any county wherein the bridge is situated, may establish and fix rates of toll to be charged at such bridge, whether the said bridge be owned by the county, a corporation or an individual or individuals. And where such bridge is across a stream which is the dividing line between two counties, the authority to establish rates of toll shall be exercised by said two counties jointly.

Bridges, tolls; now
fixed,

When bridge is on
stream dividing two
counties.

How collected.

The collection of said bridge tolls shall be enforced in the same manner as provided for the collection of road tolls in the third section of this act.

8. In every case wherein the county court shall exercise the jurisdiction and control herein conferred over any joint stock company, such jurisdiction and control shall be deemed to be consented to and approved by all the private stockholders of such company until the stockholder dissenting therefrom by motion, to be entered of record in the court of the county in which the road or any part thereof is situated, shall manifest his opposition to such control. All stockholders not so dissenting and until such dissent be entered of record as aforesaid, shall be deemed to have approved and acquiesced in the control of the said county court over such road.

When private stockholders of joint stock companies deemed to have acquiesced in the control of county courts over such corporations.

Proceedings when stockholders dissent.

And thereafter the court shall exercise control over the road as to all others not dissenting, and if the surveyor of said road be indicted for his failure to keep the road in repair the dissent of such private stockholders shall be no bar to such prosecution, and if the court shall appoint a surveyor over any portion of such turnpike or if any part of such road be added to the precinct of such surveyor to keep the same in repair, it shall be the duty of such surveyor to constantly keep the said road well drained, smooth and clear of all obstructions for the width of the road authorized by its charter.

Court to exercise control over roads as to all others not dissenting.

Dissenting of such stockholders no bar to prosecution of surveyor for failure to keep road in repair.

Duty of surveyor appointed by court.

9. The county court of every county shall be authorized to establish gates and appoint collectors of tolls, who may be authorized to exact from every person and the owner of anything passing over such road through such gate the tolls prescribed by this act. The said tolls may be collected on every section of five miles or on any part of a section of a turnpike road whether the said road be situated in or out of any city, town or village. Any gate keeper appointed by the county court of the county or by or through its authority may close his gate and prohibit the passage of any traveler or thing through the same without pre-payment of the tolls authorized to be

County court authorized to establish gates and appoint collectors of tolls.

Tolls collected on section or part of section.

Duty of gate keeper as to pre-payment of tolls.

Opening of gate or suspension of tolls; how done.

Time of suspension.

President of county court may suspend payment of tolls during vacation.

Penalty for failing or refusing to pay tolls.

How recovered.

Action to be in name of county.

No defense that road was not in good repair.

Action against county for failure to keep road in good repair.

Not to apply to Cumberland road, &c.

Provisions of chapter 33 of code concerning turnpikes, not repeated, unless in conflict.

Penalty for failure.

exacted under the provisions of this act. No gate shall be opened or the tolls thereon suspended under the provisions of any law by reason of the road being out of repair unless and until the court shall so direct by order entered of record, and every such suspension shall be only for such time as may be prescribed in such order, and the president of the county court may suspend such payment of tolls during vacation. If any person shall by force or intimidation pass through such gate or having gained an advantage by passing through the gate before the tolls are demanded, or by passing around such gate on a route not common to the traveling public, shall for any of the causes aforesaid fail or refuse to pay the tolls prescribed by law or the order of the court, he shall pay a fine of five dollars; and it shall be the duty of the gate keeper immediately to institute, not only for the foregoing but for all violations of this act, an action for the recovery of the fine authorized by law. The action shall be in the name of the county in which the gate is situated, as plaintiff against the person so liable before any justice of the county last aforesaid, and it shall be no defense to the action that the road is not in good repair; but nevertheless if the road is not in good repair, damages by action on the case may be recovered against the county for its failure to keep such road in good repair.

10. That nothing in this act shall apply to the Cumberland road so far as it lies within this State, together with all works of Internal Improvement owned by the State.

11. Nothing in this act shall be construed to repeal any of the provisions of chapter thirty-nine of the code, concerning turnpike roads, unless such provisions are in conflict with this act, and if he fail herein he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than ten, nor more

than thirty dollars for each offense, and for every seven day's failure the said surveyor shall be deemed to be guilty of a new offense, to be prosecuted and recovered as such. But this section shall not apply to the erection of a bridge or bridges over said road, the floor of which is more than twenty feet in length, and more than ten feet above the bed of the stream, but only to keeping the road and bridges of other description in repair.

When deemed guilty of new offence.

Not to apply to erection of certain bridges.

In case of the destruction or unsafe condition of any bridge, it shall be the duty of the surveyor of the road, where one has been appointed, within the seven days aforesaid, to make a temporary track or roadway sufficient to enable road wagons and other vehicles using the road to pass around such bridge in safety. If the turnpike road is managed by a superintendent or any person appointed by the court, he shall keep the road and bridges so managed by him in constant repair, in like manner as is herein required of surveyors as to turnpike roads managed by them as aforesaid, within the time aforesaid, and for failure to keep the road and bridges in repair as is required by this section, he shall be liable to all the penalties prescribed against the surveyor for similar failures.

Duty of surveyor in case of destruction or unsafe condition of any bridge.

Where turnpike is managed by superintendent, &c., appointed by court.

Duty of such superintendent as to keeping road, &c., in repair, &c.

Penalties for failure.

12. The board of commissioners of those counties where they have adopted a tribunal, as well for police and fiscal purposes, in lieu of the county court in pursuance to section thirty-four, article eight of the constitution of the State, shall have jurisdiction and control over all turnpike roads within the limits of said counties, (except the Cumberland road, so far as it lies within said counties,) but shall pass no ordinances, nor make any orders in regard to said turnpike roads without the consent of a majority of the stockholders thereof, and which will not violate any of the provisions of the constitution.

Boards of commissioners in certain counties to control turnpikes within such counties.

Exceptions to Cumberland road.

Said board not to pass ordinances nor make any orders in regard to said turnpikes without consent of stockholders and not in violation of constitution.

13. This act shall only apply to those turnpike roads, where the interest of the State in said roads

Act not to apply to turnpikes transferred to counties.

Nor to any turnpike or bridge belonging to an incorporated company who are controlling and managing same according to provisions of their charter, except that court may regulate tolls, &c.

has been transferred to the counties in which they are situated. This act shall not be so construed as in any wise to give to the county court of any county the management or control of any turnpike road or bridge belonging to an incorporated company who are, or shall be, managing and controlling the same according to the provisions of their charter, except that the county court may regulate the tolls thereon, and when the said company shall fail to keep their road in good repair, shall have the power to suspend the collection of said tolls.

Rights of such company to establish gates, appoint collectors, and enforce collection of tolls and fines.

And such company shall have the right to establish gates, as provided in the fifth section of this act, appoint collectors of tolls, and shall have the right, in their own name to enforce the collection of tolls and fines, provided for the county in section nine of this act.

Commencement.

14. This act shall be in force from its passage.

CHAPTER CCX.

AN ACT to amend and re-enact section four of chapter seventy-seven of the acts of 1868, entitled, "An act to provide free schools for the town of Weston."

Approved December 26, 1873.

Be it enacted by the Legislature of West Virginia :

Acts of 1868 amended.

1. That section four of chapter seventy-seven of the acts of 1868, be amended and re-enacted so as to read as follows :

Election of commissioners.

When elected.

Number elected.

"4. The voters of the school district aforesaid shall, annually, at the time and place for the election of mayor, recorder and aldermen of the town of Weston, elect five commissioners who shall perform all the duties prescribed by said act to be performed by three

commissioners. The said election shall be conducted How election conducted. by the same officers required by law to conduct the election for mayor, recorder and aldermen, as aforesaid. The officers so conducting the election, shall How result certified certify the result thereof to the council of the town of Duty of town council. Weston, and the said council shall declare the result of such election, shall try and determine contested elections, and fill all vacancies that may occur in the office of school commissioners as aforesaid."

2. All acts or parts of acts in conflict with the provisions of this act, are hereby repealed. Inconsistent acts repealed.

3. This act shall be in force from its passage. Commencement.

CHAPTER CCXI.

AN ACT making it a misdemeanor for a clerk of a county court not to carefully preserve the certificate declaring the result of an election, and the poll books and ballots deposited with him, or making a false entry of the result of any election; and making it a felony for such clerk or other person to alter, change, deface, or destroy any such certificate or poll book, or injure, alter, change, deface or destroy any such ballot, or take from or introduce into any sealed package of ballots or of a ballot box, any thing written or printed, purporting to be a ballot.

Approved December 26, 1873.

Be it enacted by the Legislature of West Virginia:

1. That if a clerk of a county court fail carefully to preserve the certificates declaring the result of an election, or the poll books or ballots deposited with him, according to the provisions of section twenty-nine of chapter one hundred and eighteen of the acts 1872-3, Penalty on clerk of county court for failure to carefully preserve certificates of election, or poll books or ballots deposited with him.

For changing defacing or destroying same.

For tampering with sealed package of ballots.

For making false entry, &c.

"making general provisions for elections by the people, and providing for filling vacations;" or shall wilfully alter, change, deface or destroy any such certificate or poll book; or shall alter, change, injure, deface or destroy any such ballot; or take from or introduce into any sealed package of such ballots anything written or printed, purporting to be a ballot; or shall make any false entry of the result of an election upon the county records, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars, and imprisoned in the county jail not exceeding six months.

If any person shall unlawfully take from clerk's office certificate or poll book, &c., or injure destroy, &c., or tamper with ballot box.

Penalty therefor.

Commencement.

2. If any person shall unlawfully conceal, or take from the clerk's office of a county court any such certificate, poll book, or sealed package of ballots, or shall introduce into or take from any such sealed package, anything written or printed purporting to be a ballot; or shall put into or take from a ballot-box, or any box used for that purpose, any paper written or printed, purporting to be a ticket, or who shall alter, change, injure, deface or destroy any such certificate, poll book or ballot named in this or the preceding section shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the penitentiary, not less than two nor more than five years.

3. This act shall be in force from, and after its passage.

CHAPTER CCXII.

AN ACT to repeal chapter sixteen of the code concerning public printing.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia:

1. That chapter sixteen of the code be, and same is hereby repealed. Chapter 16 of code repealed.

2. That this act shall be in force from its passage. Commencement.

CHAPTER CCXIII.

AN ACT authorizing the trustees of Preston Academy to convey a lot of ground in the town of Kingwood, known by the name of the "Preston Academy."

Passed December 26, 1873.

WHEREAS, Israel Baldwin, about the year 1850, conveyed by deed to William B. Zinn, and others, trustees of the Preston Academy, a lot of ground in the town of Kingwood, for the purpose of erecting thereon a building for educational purposes; and the said trustees, with the aid of voluntary contributions, erected a building on said lot which has been exclusively used ever since, as a school house, and now, and ever since the introduction of the free school system in this state, has been held, used and occupied as a district school house for the school district of Kingwood, in said county; and Preamble.

WHEREAS, The said building has become dilapidated, and the trustees having no means to repair or rebuild the same, are willing to convey the said lot to the board of education of said district; therefor

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful for said trustees, or such of them as are living, to convey the said lot of ground with its appurtenances to the said board of education, Trustees of Preston Academy authorized to convey lot, &c. to board of education of Kingwood District.

to be by them held as other property by them acquired for school purposes.

Title to vest in said board.

2. But nothing herein contained shall be construed to vest in said board of education any other or better title than that vested in said trustees by the deed aforesaid.

Commencement.

3. This act shall be in force from, and after the passage thereof.

CHAPTER CCXIV.

AN ACT to amend sections one, three and four of chapter fifty-four of the acts of 1872.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections one, three and four of chapter fifty-four of the acts of 1872, be amended and re-enacted so as to read as follows :

Board of education to be elected.

“1. That there shall be elected in the Independent Free School District in which the town of Ripley is, a board of education to consist of a president and two

Jurisdiction of said board.

commissioners who shall have entire jurisdiction and control over the common schools included within the following limits, viz : Commencing at the south end of William T. Greer's farm at a stake in the pike, thence west with a southern line of said farm to Mill Creek, thence down said creek crossing the same to and including D. D. Rhodes' dwelling house, thence with a straight line southwest to an old steam saw mill on mill creek, thence with a western line of the farm known as the Jacob Staats farm to the mouth

of Clay Lick Run, thence to the dwelling house of J. D. Sayre, thence running a northeast course to the top of a ridge so as to include the farm owned by C. C. Campbell; thence with a straight line to the northeast corner of E. McGuire's sycamore farm, thence with a straight line south to a rock quarry near the dwelling house of Joseph Taylor, thence south so as to include the farm owned by Amos and Joseph Kidd to the place of beginning.

"3. The board of education shall make such rules for the government of the schools under their jurisdiction as they may deem expedient or necessary for the advancement of pupils attending the same."

Said board to make rules deemed expedient, &c.

"4. The board of education shall have power whenever in their opinion they deem it necessary, to purchase and hold lands on which to build school houses and to apply to the county or circuit court for a writ in the nature of a writ of *ad quod damnum* to have such lands as they may need for the purpose aforesaid condemned, and to employ and regulate the salaries of teachers in the schools under their jurisdiction and to lay a sufficient levy upon the taxable property and persons of their district, to continue the common schools at least six months in the year; and shall observe and enforce the general school law of the state in the common schools under their control."

Powers of board.

2. This act shall be in force from its passage.

Commencement.

CHAPTER CCXV.

AN ACT to provide for the incorporation of banks of discount and deposit.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful for natural individual

Who and what number may associate and form companies for banking purposes.

persons not less in number than five, to associate and form companies for the purpose of carrying on the business of banking, each in such place in this state as shall be designated in its article of association, and in the certificate hereinafter required to be made subject, however, to the contingencies, restrictions, conditions and liabilities prescribed by law.

General restrictions on them.

Articles of association.

2. Such persons shall enter into articles of association which shall specify in general terms the object for which the association is formed, which shall be signed by the said persons and sealed with their respective seals and acknowledged for record before any person authorized to administer an oath.

To be signed, sealed and acknowledged.

What said articles must specify.

3. The said articles of association shall specify: First, the name assumed by such company and by which it shall be known in its dealings, and the time in which it will expire. Second, the amount of the capital stock of such company and the number of shares into which the same is divided and the amount paid in by the subscribers. Third, the name of the place where the said bank is to be located, designating city, town or village and the county. Fourth, the name and place of residence and the number of shares held by each member of the company and the maximum of additional shares they may desire to sell. Fifth, a declaration that said articles are made to enable such persons to avail themselves of the advantages of this act.

To be delivered to secretary of state and preserved in his office.

4. Such articles with the certificate of acknowledgment and affidavit hereinafter required shall be delivered to the secretary of state who shall preserve the same in his office.

When secretary of state to issue certificate of incorporation.

5. When the agreement with certificate of acknowledgment and affidavit aforesaid shall have been delivered to the secretary of state he shall thereupon issue to the said corporation his certificate under the great seal of the state, to the following effect:

"I, A. B., secretary of the State of West Virginia,^{Form of certificate.} hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following: (Here insert.) Wherefore, the corporators named in said agreement, and who have signed the same, and their successors and assigns are hereby declared from this date until the — day of — 18—, a corporation by the name and for the purposes set forth in said agreement.

Given under my hand and the great seal of the State at —, this — day of —."

And said certificate shall be recorded by him.

6. The affidavits of at least two of the corporators named in the agreement shall be annexed thereto, to the effect that the amount therein stated to be paid on the capital subscribed which shall in all cases not be less than ten per cent. of the par value of the stock, has been in good faith paid in for the purposes and business of the intended corporation, without any intention or understanding that the same shall be withdrawn therefrom before the expiration or dissolution of the corporation.^{▲ Affidavits of two corporators to be annexed to agreement.}
^{What such affidavit must set forth.}

7. The corporators shall, within three months after the date of the certificate, cause the same to be recorded in the clerk's office of the county court in which the principal office is to be.^{When and where certificate to be recorded.}

8. No corporation formed under this chapter shall continue for more than twenty years from the date of the certificate of incorporation.^{How long corporation to continue.}

9. The secretary may charge a fee of five dollars for every such certificate issued by him, and for recording the same and for issuing an attested copy or certificates a fee of five dollars, or in lieu thereof ten cents for every one hundred words. He shall furnish an attested copy of the certificate to the clerk of the house of delegates at the close of every session of^{Fee of a secretary for issuing certificate.}
^{For attested copy.}

Fee of clerk of county court for recording certificate.

the legislature. The clerk of the county court may also charge such fee for recording said certificate as he is entitled to charge for a deed of the same number of words. And which fees both to the secretary and clerk, shall be paid at the time the service is rendered by the person at whose instance it was done.

When and by whom paid.

Additional shares may be sold by corporation. To whom.

10. Such corporation may sell additional shares not exceeding the maximum mentioned in their agreement to other persons, except to partnerships or corporations, and the purchasers shall become stockholders on the same footing as the original stockholders.

Purchasers to become stockholders.

Incorporation.

11. When a certificate of incorporation shall be issued by the secretary of the state pursuant to this chapter, the corporators named therein and their successors and assigns shall, from the date of said certificate until the time designated in said agreement for the expiration thereof, unless sooner dissolved according to law, be a corporation by the name and for the purpose of business therein specified. And said certificate of incorporation or a copy of the record thereof, certified by the secretary of state, shall be evidence of the existence of the corporation as aforesaid.

Evidence of corporate existence.

Capital stock; limitation to.

12. No company shall be permitted to commence or carry on the business of banking under the authority of this act unless its capital stock shall be at least twenty-five thousand dollars. Nor shall it at any time exceed five hundred thousand dollars.

Liability of stockholders to creditors.

13. The stockholders of any bank hereafter authorized by the laws of this state whether of issue, deposit or discount, shall be personally liable to the creditors thereof over and above the amount of stock held by them respectively to an amount equal to their respective shares so held, for all its liabilities accruing while they are such stockholders.

14. The capital stock of each banking company

shall be divided into shares of not less than twenty-five nor more than one hundred dollars each, and shall be assignable on the books of the company in such manner as its by-laws shall prescribe. But no shareholder shall have power to sell or transfer any shares held in his own right so long as he shall be liable in any way to the company for any debts which shall have become due and remain unpaid. Nor in such case, shall such stockholder be entitled to receive any dividend, interest or profit on such shares so long as such liabilities shall continue, but such interest, profits or dividends shall be retained by said company and applied to the discharge of such liability, and no stock shall be transferred without the consent of a majority of the directors while the holder thereof is indebted to the company.

Capital stock; shares of.

Assignable.

No sale or assignment by person in his own right if indebted to company.

Dividends and interest; how applied if stockholders indebted to company.

How stock of such stockholder transferred.

15. In all elections of directors and in deciding all questions at meetings of the stockholders, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares and to give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner. But no officer, clerk, teller or book-keeper of the company shall act as proxy.

Votes each stockholder entitled to.

In what manner stockholders elected.

What persons shall not act as proxy.

16. The affairs of every company formed and organized to carry on the business of banking under this act, shall be managed by not less than five nor more than nine directors. Each director shall, during his whole term of service, be a citizen and resident of this state. No person shall be a director of a bank who is not a stockholder. Each director shall

Directors; number of.

Where to reside.

Must be a stockholder.

Oath of office.

take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the company, and that he will not, knowingly and willingly permit to be violated any of the provisions of the laws of this state relating to banks; that he is the bona fide owner in his own right of the stock standing in his name on the books of the company, and that the same is not hypothecated in any way, or pledged as security for any loans obtained or debts owing; which oath, subscribed by himself and certified by the officer before whom it is taken, shall be filed and carefully preserved in said bank building.

How certified and where filed.

Term of office.

Subsequent elections for directors; when held.

Term of office.

Vacancies; how filled.

If directors shall not be elected at time appointed, and election may be held on subsequent days.

Notice in such cases.

President, how elected.

General powers.

17. The directors first elected shall hold their office until the first day of January next after their election, and until their successors are elected and qualified. All subsequent elections shall be held annually on the first Monday in January, and the directors so elected shall hold their office for one year and until their successors are elected and qualified. Any vacancy in the board of directors shall be filled by appointment by the remaining directors. If from any cause an election of directors shall not be made at the time appointed, an election may be held on any subsequent day, thirty days notice being given in a newspaper published in the county where the bank is located, or if none be so published, in the nearest one to the bank, published in any other county. One of the directors shall, by a vote of the directors, be elected, president of said bank.

18. Every bank hereafter formed pursuant to the provisions of this act, shall have power to adopt a corporate seal, and make and adopt by-laws not inconsistent with this act or the laws of the State or of the United States; shall have succession by the name designated in its organization certificate, by such name may make contracts, sue and be sued, complain and defend in any court of law and equity as fully as natural persons; may by its directors appoint or elect

such officers as they may deem necessary, define their duties, require bonds of them and fix the penalty thereof, dismiss said officers or any of them at pleasure; and exercise, under the laws of this state, all such incidental powers as shall be necessary to carry on the business of banking, by discounting promissory notes, negotiating drafts, bills of exchange and other evidences of indebtedness, by receiving deposits, buying and selling exchange, bank notes, bullion or coin, and by loaning money on personal or other security.

May receive deposits, discount notes and deal in bullion or bills, &c.

19. None but natural individual persons shall become stockholders in any bank hereafter to be incorporated. The corporators shall within three months after the date of the certificate, cause the same to be recorded in the clerk's office of the county court, in which the principal office is to be, and any company failing to do this, shall be fined not exceeding one thousand dollars.

Who may become stockholders.

When and where certificate recorded

Penalty for failure.

20. That as to any bank in this state, other than a national bank, the first day of January, the twenty-second day of February, the fourth day of July, the days of national thanksgiving, and the twenty-fifth day of December, shall be considered holidays, and notes, bills or other evidences of debt maturing or falling due on either of the days aforesaid, shall be due and payable on the preceding day.

Holidays: what days considered as such as to banks other than national banks.

Notes, &c., falling due on such days; when payable

CHAPTER CCXVI.

AN ACT relating to the school district of Martinsburg,
West Virginia.

Passed December 26, 1873.

Be it enacted by the Legislature of West Virginia:

School district
established.

Boundaries of

1. The town of Martinsburg, contained within the following boundaries, to-wit: Beginning on the middle of the county bridge, crossing the Baltimore and Ohio railroad, southeast of Green Hill Cemetery, and corner to Martinsburg, Arden, and Opequon districts; thence with the line of Opequon, north $11\frac{1}{2}^{\circ}$ east, 66 poles to a stake at the angle of the fence, and in an original line between the land of Ezra Herring, and the lot of C. Henry; thence north $5\frac{1}{2}^{\circ}$ east, passing through the lands of E. Herring, A. Quenzel, P. Strines', second addition, and the southeast corner of A. Roth's lot, 253 poles to a stake in a field; thence north $60\frac{1}{2}^{\circ}$ west, passing along the line between the additions of James A. Boyd, John Strine and Hockinberry, 62 poles to a stake in a stone fence on the west side of the M. and P. turnpike; thence passing through the lands of David Hess, H. S. Hanni's and Co., south $88\frac{1}{2}^{\circ}$ west, 162 poles to a stake in low grounds, on the east side of, and about 3 poles from the Baltimore and Ohio Railroad, and on the land of John W. Stewart, and corner to Opequon, Hedgesville and Martinsburg districts; thence with the line of Hedgesville in part, and finally with Arden districts, south $36\frac{3}{4}^{\circ}$ west, 245 three-tenths poles to a stake in the grade at the west end of King street; thence south 90° east, 176 poles to a stake about two rods southwest of a stone house on the lands of Hon. Chas. J. Faulkner; thence south $71\frac{1}{4}^{\circ}$ east, 84 poles to a stake at the south end of Queen street; thence north 72° east, 224 poles to the beginning, it being the present limits of the town of Martinsburg, shall constitute but one school district to be known as "The School District of Martinsburg."

Election of com-
missioners.

Commencement
and term of office.

2 The qualified votes of the said school district shall, on the first Tuesday of November, 1875, elect five commissioners; no two of whom shall reside in the same ward of the town of Martinsburg, whose term of office, and all others hereafter elected, shall com-

mence on the first day of January, succeeding their election, and be as follows :

Two shall hold for the term of one year, and three for the term of two years, to be decided by lot; and annually thereafter, on the first Tuesday of November, the qualified voters of said district shall elect two or three commissioners, as the case may be, for the term of two years, to fill the vacancies made by the expiration of the term of office of the commissioners previously elected, and the persons so elected throughout the district shall constitute a board of education for the district to be denominated, "Board of Education of the School District of Martinsburg." The term of office of the members of the present board of education shall cease with the expiration of the time for which they were elected, and the powers and duties of the school commissioners of the district of Martinsburg, conferred by this act, shall be exercised by the board of education as now organized, until the election and qualification of their successors as hereinbefore provided.

How determined.

Annual election to fill vacancies made by expiration of term of office.

Board of education.

When term of present board to cease.

Powers and duties; how exercised.

3. It shall be the duty of the clerk of the board of education, before the first day in December, in each year, to notify the commissioners elect throughout the district, of their election, and before entering upon their duties as school officers, each of said commissioners shall be required to qualify by taking and subscribing to the following oath of office :

Clerk of board to notify commissioners of their election; when.

Qualification of.

"I, A. B., do solemnly swear (or affirm) that I will faithfully perform the duties of school commissioner of the district of Martinsburg during the term for which I was elected, to the best of my ability, according to law, so help me God."

Oath of office.

The clerk of the board of education is authorized to administer said oath, a copy of which shall be kept by him upon the files of his office. Any vacancy which may occur in the office of school commissioner, by death, resignation, refusal to serve or

Who to administer oath; where filed.

Vacancies in office how filled.

otherwise, shall be filled by the board of education of the district within thirty days from the happening of said vacancy by the appointment of a suitable person, who shall hold his office until the next annual school election, when a commissioner or commissioners shall be elected for the unexpired term.

4. The first meeting in January shall be held on the first Monday in said month, at 7 o'clock, P. M., at such place as the board may have designated: at which time the board shall be organized by the election, by the members present, if there be three or more, of one of their number for president, and a clerk for the board.

The president being a member of the board by virtue of his election as commissioner, shall be entitled to vote upon all questions submitted to the decision of the board. Before entering upon the duties of his office the clerk shall, with at least two good securities, to be appointed by the board, enter into bond, payable to the board of education of the school district of Martinsburg, in such penal sum as the board of education may determine, conditioned for the faithful performance of the duties of said office as may be prescribed in this act or by order of the said board, which bond shall be filed with the president of the board for safe keeping.

5. The president shall perform such duties as ordinarily devolve upon the presiding officer of a deliberate body; in his absence a president pro tem. may be chosen.

6. The clerk shall record, in a book to be provided for the purpose, all the official acts and proceedings of the board, which shall be a public record, open to the inspection of all persons interested therein. He shall preserve in his office all papers containing evidence of title, contracts and obligations, and in general, shall record and keep on file in his office all

such papers and documents as may be required by any of the provisions of this act, or by order of the board of education. He shall, annually, between the first and the tenth of September, make report to the district superintendent of such facts in his possession as may be necessary to enable said Superintendent to complete the report required to be made by him to the state superintendent of schools; for his services he may receive such compensation as the board may allow. In his absence the board may appoint a clerk pro tempore.

His annual report.

Compensation.

Clerk pro tempore.

7. The board of education shall hold stated meetings at such times and places as they may appoint, not less than three members being required to constitute a quorum for the transaction of business. Special meetings may be called by the president, or at the request of three members of the board, by the clerk, on giving one day's notice of the time of holding the same.

Meetings of board.

Special meetings;
how called.

8. The board of education of the district of Martinsburg shall be a body corporate in law; and, as such, they may purchase, hold, sell or convey real or personal property for the purpose of education within the district; may receive any gift, grant, donation or devise; may become party to suits and contracts, and do other corporate acts; they shall have the management of, and be invested with the title to, all real and personal property for the use of public schools within the district, and shall manage and dispose of the same as in their opinion will subserve the interests of the schools.

Incorporation and
powers of board.

9. Annually, within sixteen days after the fourth day of July, the board of education shall cause to be taken an enumeration of all the youths between the ages of six and twenty-one years, resident in each ward of the district, distinguishing between male and female, white and colored; and the result thereof

Enumeration of
youth.

To be verified and recorded.

verified by the oath or affidavit of the persons employed to take the same, to the effect that the enumeration is correct, and that they have used all the means in their power to have it so, shall be recorded in the office of the clerk of the board. It shall be the duty of the clerk to administer said oath; he shall also communicate to the district superintendent the result of said enumeration of youth. The parties employed to take said enumeration may be required at the same time to take the census of the district.

Clerk to administer said oath, and report result of enumeration.

Census may be taken at same time.

State superintendent to report separately to auditor the enumeration for Martinsburg district

Duty of county superintendent as to apportionment of school money.

10. The state superintendent of schools, in his report to the auditor, shall specify separately the results of the enumerations of youth in the school district of Martinsburg, and the rest of Berkeley county; and the county superintendent in apportioning money for school purposes, shall apportion to the district of Martinsburg, and the rest of Berkeley county, separately according to their respective numbers of youth, as shown in the list furnished by the state superintendent, and said superintendent shall draw his requisition on the auditor in favor of the treasurer of the district of Martinsburg, for such amount as the district is entitled to receive according to the apportionment of the auditor, and at the same time shall notify the clerk of the board of education of the amount.

Assessment for school purposes.

11. It shall be the duty of the board of education annually, in the month of July, to determine as nearly as practicable the amount of money necessary, in addition to all other available funds, to continue the schools of the district for a period of not less than nine months, and for all other purposes relating to the schools of the district, such as the repairing and improvement of school premises, the purchases of sites and the building of school houses, the payment of debts previously contracted, which may fall due within the year, and said board shall cause the amount to be assessed on all the taxable property of the district, subject to state and county taxes: Provided, That not

more than five mills on the dollar valuation of said Provide as to amount assessed. taxable property shall be assessed in any one year for the purpose of continuing the schools for said period of not less than nine months, and for ordinary repairs and incidental expenses, and not more than four mills on the dollar valuation for the purchase of sites, the building of houses and permanent improvements.

The amount collected under the assessment last named shall be known as the building fund. Building fund. The assessments made under the provisions of this section shall be levied and collected by the same officers as the county levies are made and collected. Collection of levy. The amounts thus collected shall severally be certified by the collecting officer to the clerk of the board of education, and shall be paid out only upon drafts signed by the clerk and issued by order of the board, but the board of education, shall not, during any one year, incur any expenses that shall exceed the amount of Limitation as to expenses to be incurred. available funds received for school purposes during that year. The board shall, however, have authority for a term of five years from the passage of this act to borrow, upon the credit of the building fund, such sums as may be necessary to cancel any liabilities May borrow money upon credit of building fund. which they may incur in the erection or construction of buildings or the purchase of sites for school purposes. For what purposes, At the expiration of the said five years all Time limited to five years. power on the part of the board to borrow money shall cease.

12. The collecting officer shall annually, in the month of July, make settlement with the finance committee of the board of education of all accounts arising from assessments made by the board within the preceeding school year for school purposes within the district, as provided by the acts of the legislature not included in the provisions of this act. Settlement by collecting officer.

13. The collecting officer, for collecting and disbursing the taxes assessed by the board of education, shall Compensation of such officer.

be entitled to receive a compensation of not more than three per cent. upon the amount collected.

Power of board as to government of schools.

14. The board of education shall have power to make all necessary rules and regulations for the government of the schools of the district; for the admission of pupils therein; for the exclusion of children whose attendance would be dangerous to the health or detrimental to the morals or discipline of the schools. They may prescribe a uniform list of text books for use in the schools of the district, and may furnish books and stationery for the use of indigent children in attendance at the schools; they may provide a suitable number of evening schools during the fall and winter months, for the instruction of such youth over twelve years of age as are prevented by their daily vocation from attending schools; they may furnish all necessary apparatus, stationery, registers, text books and books of reference for the use of teachers, and incur all other expenses necessary to make the system efficient for the purposes for which it was established and pay the same from the school funds of the district.

Text books

High school.

15. The board shall have power to establish one high school for the district, in which shall be taught such higher branches of learning as the district superintendent, with the approval of the board of education, may designate; until said school shall be established, such higher branches shall be taught in the grammar schools of the district. That the board of education of the district of Martinsburg be required to have the German language regularly taught in the free schools of said district, and for which purpose the board of said school district shall employ a German teacher capable of giving instructions in all the branches required to be taught in the free schools of this state, in both English and German languages.

German language.

16. Admission to the various schools of the district shall be gratuitous to all white children, wards and apprentices of actual residents within the district between the ages of six and twenty-one years: Admission to schools. Provided, That the admission of pupils residents of one ward to the schools of another, shall rest with the board of education. Provisc. Non-residents of the district Non residents may be allowed to attend the schools of the district upon such terms as the district superintendent, with the approval of the board of education may prescribe.

17. The board of education shall establish within the district one or more separate schools for colored children, when the whole number by enumeration exceeds thirty, so as to afford them as far as practicable the advantages and privileges of a free school education; all such schools shall be under the management and control of the board, and shall be subject to like general regulations as the other schools of the district, but under no circumstances shall colored children be allowed to attend the same school or be classified with the white children. Schools for colored children.

18. The treasurer of Berkeley county shall be the treasurer of that part of the school fund of the district derived from the state, and such other funds accruing to the districts as the board may direct to be paid into his hands. He shall be entitled to receive a commission of one per cent. upon any school moneys received and disbursed by him. Treasurer. Before receiving any school moneys said treasurer shall give His commission. bond with security approved by the board of education, in such amount as shall be named by the said board; which bond shall be filed with the clerk of the board, and upon forfeiture of said bond it shall be the duty of said clerk to prosecute and collect from the treasurer and his securities the amount named in the bond, for the use of the schools of the district. Bond. Forfeiture of. Duty of clerk to prosecute, &c.

How money to be paid out by treasurer.

19. No money shall be paid out by the district treasurer except on a draft by the president and countersigned by the clerk of the board of education, and specifying upon its face the particular account to which the same is chargeable; nor shall any credit be allowed to the treasurer in his annual settlement with the finance committee upon any voucher except such draft.

Credit allowed on annual settlement

Annual settlement of treasurer.

20. The treasurer of the district shall annually, in the month of July, settle with the finance committee and account to said committee for all moneys received, from whom and on what account, and the amount paid out for school purposes in the district during the school year ending June thirtieth, next preceding the time of said settlement.

Penalty for failure.

21. In case the treasurer shall fail to make such annual settlement within the time prescribed in the preceding section, he shall forfeit five hundred dollars, to be recovered before any court having jurisdiction, for the use of the schools of the district.

How recovered.

Proceedings by clerk.

And it is hereby made the duty of the clerk of the board of education to proceed forthwith, in case of such failure, by suit against such treasurer and his securities, to recover the penalty aforesaid. But if,

When further time may be allowed treasurer.

before suit shall have been entered, the treasurer shall satisfy the board of education that owing to sickness or other cause which may seem to them sufficient, said settlement has been rendered impracticable, such further time may be allowed as the board may deem reasonable and just.

Condemnation of lands for school purposes.

22. When ground shall have been designated by the board of education as a suitable site for a school house lot or for enlarging the same, if the owner or owners refuse to sell the same or demand a price therefor which is deemed by the board unreasonable, the board of education may petition the circuit or county courts of Berkeley county to have such ground condemned for the use of the public schools,

Proceedings thereon.

and said court shall appoint a jury of viewers, to consist of three discreet and disinterested persons, not residents within the district in which such ground is located, who being duly sworn or affirmed, faithfully and impartially to try all matters submitted to them, shall assess the value of such ground ; and upon due return being made of such assessment and the amount thereof being paid or tendered to the owner or owners of the ground in question, the said board may enter thereon and use such ground for school purposes : Provided, That no land shall be taken in one parcel which shall exceed in quantity one acre. Proviso as to quantity taken.

23. All school houses, school house sites and other property for the use of the public schools of the district, shall be exempt from taxation, and also from sale on execution, or other process in the nature of an execution. School property exempt from taxation and execution.

24. At their first meeting in August the board shall appoint a superintendent of schools for the district who may be the principal of the high or graded school or such other person as the board may deem competent, and fix his salary. Said superintendent shall be an officer of the board, without power to vote, and in addition to the duties specified in this act he shall perform such other duties with relation to the schools of the district as the board may prescribe. He shall be liable to removal by the board of education for any palpable violation of law or omission of duty. But he shall not be removed unless charges shall be preferred to the board by a member thereof, and notice of a hearing with a copy of the charges delivered to him, and an opportunity be given him to be heard in his defense. When the office shall become vacant from any cause, before the expiration of the term for which the superintendent shall have been elected, the board of education shall fill the same by appointment for the unexpired term. It shall be the duty of the district superintendent to Superintendent : when and how appointed. Salary. Not to vote. His duties. Liable to removal. Vacancy in his office. How filled.

Report of superintendent.

make from the report of the clerk of the board of education, and from his own information, such report to the state superintendent of free schools, of the character and financial condition of the schools of the district, as may be necessary in order to secure to the district its quota of the state school fund, and to convey to said state superintendent all necessary information of the character and condition of the schools of the district. The district superintendent shall not

Not to receive any gift, emolument, &c.

directly or indirectly receive any gift, emolument or reward for his influence in recommending the use of any books, apparatus or furniture of any kind whatever in the school of the district, under a penalty of five hundred dollars, to be recovered before any court having jurisdiction of the same.

Penalty therefor.

Examining committee.

25. The board of education may appoint two competent persons to act with the district superintendent as an examining committee. It shall be the duty of

Duty of.

said committee to examine all applicants for positions as teachers in the schools of the district; but no applicant shall be entitled to examination who shall

Applicant to be of good moral character.

not furnish evidence satisfactory to the committee, of good moral character. Certificates of qualification

Certificates to be graded from 1 to 5.

shall be granted according to the following scheme, numbering one to five, according to the merits of the applicants, thus: Number one shall denote a very

Effect of each number.

good teacher; number two, good; number three, medium; number four, deficient, and number five very deficient. A number five certificate shall be

Number 5 certificate to be granted but once.

granted not more than once, and a number four certificate not more than twice to the same person. No

Number 4 but twice.

Period granted for.

certificate shall be granted for a longer period than one year. The committee shall hold meetings for the

Meetings of committee.

examination of teachers at such times and places as the superintendent may appoint. They may receive such compensation as the board may allow.

Compensation

Teachers: their appointment.

26. Teachers for the district schools shall be appointed by the board of education for the district. When a high school for the district shall have been

established. The teachers for the same shall also be appointed by the board: ^{Proviso.} Provided, That no person shall be employed to teach in any public school for the district who shall not first have obtained from the examining committee a certificate in duplicate of qualification to teach a school of the grade for which application is made, the duplicate copy of which shall be filed with the clerk of the board of education; and no salary shall be paid to any teacher until such duplicate be filed as aforesaid. The board shall, annually, in the month of July, before making ^{Salary; when and how fixed.} the assessment for school purposes as provided in the eleventh section of this act, fix the salaries to be paid to teachers for the scholastic year to commence on the first Monday of September ensuing.

27. Teachers shall be subject in all respects to the rules and regulations adopted by the board of education, and they may be removed by the board for incompetency or grossly immoral conduct, or disregard of the rules and regulations prescribed by the board, upon complaint of the superintendent or any member of the board. ^{Removal of teachers.}

28. If any person or persons shall mar, deface or otherwise injure any school house, out-building, fence, furniture or other school property of the district, the person or persons so offending shall be liable to prosecution before any court having jurisdiction within the district, and upon conviction shall be subject to a fine of not less than five dollars and costs of prosecution; and if the amount of damage done shall exceed five dollars, the person or persons convicted of the offence shall be liable for the full amount thereof. If the injury be done by a minor, and upon conviction thereof and failure to pay the fine imposed, the court or magistrate having jurisdiction may imprison, not exceeding ten days. It shall be the duty of the school commissioners of the district in which the property damaged may be located, to ascertain, ^{Injury to school property.} ^{Penalty therefor.} ^{If done by a minor: what then.} ^{Who to prosecute. Fines, how disposed of.}

if possible, by whom the offence was committed, and when satisfied thereof to cause the party or parties to be arrested and tried for the offence, in the name and on behalf of the board of education; and all fines or damages collected by virtue of this section shall be paid into the district treasury, and be appropriated for the benefit of the schools.

Financial statement of board; by whom made and how published.

29. The clerk of the board shall, annually, in the month of July, publish in two newspapers of the city of Martinsburg having the largest circulation, a detailed statement of the receipts and expenditures of the board during the previous school year.

General school law and inconsistent acts not to affect district.

30. The provisions of the general school law of the state not included in this act, shall be regarded as applicable to the district of Martinsburg; and all laws and acts heretofore existing which are in any manner inconsistent with the provisions of this act shall be void within said district.

Question for or against independent school district to be submitted to voters of district: when and how.

31. The board of education of the district of Martinsburg shall, as soon as possible, submit to the qualified voters residing within the limits prescribed in this act, and proposed to be embraced within the limits of the independent school district of Martinsburg, at an election to be held after four weeks' notice of the same has been given in two papers published in said town, the question, for or against an independent school district; those in favor of the establishment of said district shall vote ballots on which shall be written or printed, "for independent school district," and those opposed to the establishment of said district, shall vote ballots on which shall be written or printed, "against independent school district;" and if a majority of those voting shall be in favor of the establishment of an independent school district the same shall be established with limits and boundaries as hereinbefore described, and the provisions of this act shall go into effect on and from the day succeeding said election.

Majority to determine question

When provisions of act to go into effect.

32. The board of education of the district of Martinsburg shall appoint the inspectors and clerks of election to hold said election, who shall certify the results of said election to the board within three days from the day of the election.

Inspectors and clerks of election; how appointed.

Result, when and how certified.

CHAPTER CCXVII.

AN ACT to amend and re-enact sections seven, ten and twenty of chapter seventy-nine of an act entitled, "An act to provide for the public printing and binding, and for supplying stationery and printing paper for state use," approved April 1, 1873, and to add sections twenty-five and twenty-six to said act.

Passed December 22, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections seven, ten and twenty of chapter seventy-nine of the acts of 1872-3, be amended and re-enacted so as to read as follows:

Acts 1872-3 amended

"7. The journals of the two houses of the legislature, all reports, communications or other documents, except bills ordered by the legislature, or either branch thereof, executive documents, the laws and joint resolutions, and the reports of the decisions of the supreme court of appeals, shall be printed solid and without any reglet between the lines, except the captions or headings of the supreme court reports and laws, and shall be in size, style of printing, and bind-

Journals, executive documents, laws, &c., and supreme court reports, how printed.

Executed as to bills, &c., legislature.

ing in all respects equal to, and uniform with the work of the same class, heretofore executed for the state.

Contract bond and competing proposals to be submitted to governor.

If the governor approve contract he shall endorse the fact thereon.

When.

Where filed.

If contract be not approved, commissioners to be notified of fact within two days.

Contract to be relet

Contract awarded under reletting: when to take effect

Approval of bond

Temporary contract when and how made.

Auditor to noify successful bidder.

If contractor fail to proceed with execution of contract within twenty days after notice, commissioners to relet contract.

"10. When a contract has been made by the commissioners of public printing, it shall be submitted to the governor, and with it shall be submitted also, for his examination, the bond which accompanied the proposal accepted, the accepted proposal itself, and all competing proposals received by the commissioners. If the governor approve the contract thus submitted, he shall within two days after receiving the same, indorse the fact thereon, and transmit it to the auditor to be filed by him in the auditor's office. If the governor does not approve such contract, he shall within two days after receiving the same, notify the commissioners of the fact, and they shall proceed to re-let the contract, advertising for new proposals for such length of time as they may deem proper. The contract awarded under the re-letting herein provided for, shall take effect immediately or at such time as the commissioners shall direct, (not to exceed twenty days after such award,) upon the bond of the contractor or contractors being approved as sufficient by the attorney-general. In case of his disapproval of the contract or bond, as aforesaid, the commissioners may make a temporary contract for said printing, binding, stationery and printing paper, at rates not exceeding those prescribed by law. Upon the contract being approved by the governor, at the time of the original letting or the bond being approved as sufficient by the attorney-general, in case of a re-letting of the contract as herein provided, the auditor shall immediately notify the successful bidder that his contract or bond, (as the case may be,) has been approved.

If from death or any other cause there is a failure on the part of the contractor or contractors to proceed with the execution of the contract, within twenty

days after notice of the acceptance of his bid, the commissioners shall proceed to re-let the contract to the lowest responsible bidder, subject to the approval of the attorney-general, as to the sufficiency of the bond, in the manner hereinbefore provided.

Bond to be approved by attorney general.

Any contract awarded for the contract period ending on the second Wednesday of January, 1875, and disapproved before the passage of this act, may be re-let by the commissioners as herein prescribed in cases of other disapprovals, and upon the approval of the bond by the attorney-general.

Contracts heretofore awarded, and disapproved; how relet.

"20. The clerk of the House of Delegates as the acts of the legislature are passed, shall prepare in condensed form, and deliver to the printer briefs of the contents of the chapters of said acts to be printed therewith in the form of side notes; he shall also prepare suitable and convenient indexes for the journal of the House of Delegates, and the acts of the legislature, each index to be delivered to the printer within one week after the completion of the printing of the work for which it is designed.

Clerk of house of delegates; his duty as to side notes and indexes.

The clerk of the Senate immediately upon the adjournment of the legislature, shall prepare a suitable and index for the senate journal; such convenient index to be delivered to the printer within one week after the completion of the printing of the work for which it is designed: Provided, however, that the index for the acts for the session of 1872-3, shall be placed in the hands of the printer within twenty-days after the printed copy of said acts shall have been delivered to the clerk of the House of Delegates, and the index to the senate journal and house journal of said session, shall be placed in the hands of the painter within sixty days from the time the printed copy of said journals, are delivered to the clerk of the Senate, and clerk of the House of Delegates, respectively."

Clerk of senate; his duty as to index for senate journal.

Proviso, extending time for indexing acts and journals of session of 1872-3.

Be it further enacted:

25. All contractors for executing the public printing

Contractor's account for printing &c., and stationery; to whom presented for payment.

Items of charges; how stated.

Charge for composition; how stated.

For press work; how stated.

Press work for extra copies; how stated.

When to present with account printed copy of document.

Charge for press work, for blanks, circulars, &c., how stated.

Contractor's account for printing &c., and stationery; to whom presented for payment.

Officer ordering printing; to whom to be presented to superintendent of public printing; what?

Penalty on contractor for falsely swearing to correctness of account.

or binding, or furnishing the stationery for the use of the state, shall present their bills or accounts, for payment thereof to the officer, whose duty it is to certify the same. Every item for which a charge is made, shall be distinctly and separately stated in said bill or account. If the charge be for composition, the name or character of the document, the number of pages, the number of ems in each page, the aggregate number of ems, the price per thousand ems, and the aggregate price for the whole composition of each document, shall be distinctly stated in separate columns. If the charge be for press work on bills, journals, books or pamphlets, the number of impressions, the number of tokens, the price per token, and aggregate price charged, each shall be distinctly stated in separate columns; and if the charge be for press work, for extra copies of bills, journals, or other documents of less than six pages, printed for the current use of the legislature, the number of impressions, and the number of tokens required to print such extra copies, shall also be stated; and in all cases when the number of pages of the document printed be less than sixteen pages, the contractor shall present with his account a printed copy thereof, folded, but neither cut nor stitched. If the charge be for press work or blanks, circulars or other work of like character, the date or character thereof; the number of quires, the price per quire, and the aggregate charge therefor, shall be distinctly stated in separate columns. In all cases the bill or account of the contractor shall be accompanied by a copy of the work executed, and verified by the affidavit of the contractor. Every other ordering printing to be done, shall forthwith report the same to the superintendent of public printing, stating the day upon which the "copy" was delivered to the printer.

26. Any contractor mentioned in the foregoing section, who shall falsely swear to the correctness of any

bill or account aforesaid shall be guilty of perjury and punished accordingly, and shall moreover be liable upon his bond for any money he may have unlawfully drawn from the treasury. Any officer who shall wilfully or fraudulently falsely certify any such bill or account for payment, or wilfully make any other false certificate in relation thereto, shall be guilty of perjury, and shall be punished accordingly, and shall moreover be fined not exceeding five hundred dollars for each offense. Any officer failing to perform any duty required by this act, or the act hereby amended, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty, nor more than five hundred dollars for each offense. Any officer or other person authorized to order or procure printing, binding or stationery for the use of, or at the expense of the state, who shall order or procure the same contrary to the laws of the state, passed since the twenty-second day of August, in the year one thousand eight hundred and seventy-two, and any officer who shall certify the same for payment, or shall pay the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding five hundred dollars for each offense.

Penalty on officer for falsely certifying account, &c.

Penalty on officer for failure to perform any duty required.

Penalty on officer or other person for procuring printing, and stationery, &c., for state use, contrary to law, and for certifying same for payment.

CHAPTER CCXVIII.

AN ACT to amend and re-enact chapter one hundred and forty-one of the code, concerning the means of enforcing recoveries of money otherwise than by levying a writ of fieri facias.

Passed December 27, 1873.

Be it enacted by the Legislature of West Virginia :

That chapter one hundred and forty-one of the

Code amended.

code, be amended and re-enacted so as to read as follows :

No capias satisfaciendum to issue, hereafter.

1. No writ of capias ad satisfaciendum shall be hereafter issued.

Lien on personal estates.

Writ of fieri facias a lien on debtor's whole personal estate from time it is delivered to officer to be executed.

2. Every writ of fieri facias hereafter issued shall, in addition to the effect which it has under chapter one hundred and forty of the code, be a lien from the time it is delivered to a sheriff or other officer to be executed, upon all the personal estate of, or to which the judgment debtor is possessed or entitled, (although not levied on, nor capable of being levied on, under that chapter,) except in the case of a husband or parent, such estate as may have been listed and set apart as exempt from distress and levy under the provisions of law, and except that as against an assignee of such estate, for valuable consideration, or a person making a payment to a judgment debtor, the lien by virtue of this section shall be valid only from the time that he has notice thereof. This section shall not impair a lien acquired by an execution creditor under chapter one hundred and forty. The lien so acquired under said chapter, as well as under this chapter if docketed, as judgments are docketed within thirty days after the return of the execution, shall be an abiding lien upon the property owned by the debtor within the county at the time the execution was placed in the hands of the sheriff, and shall have preference over a purchaser or any subsequent lien.

Exception in certain cases.

Exception as to lien previously acquired

If docketed within thirty days after return of execution shall be an abiding lien, and shall have preference over purchaser or any subsequent lien.

How lien terminated.

3. The lien acquired under the preceding section shall cease whenever the right of the judgment creditor to levy the writ of fieri facias, under which the said lien arises, or to levy a new execution on his judgment, ceases or is suspended by an undertaking or forthcoming bond being given and forfeited or by an appeal or otherwise.

How debtor compelled to discover his estate on which such writ is a lien.

4. To ascertain the estate upon which a writ of fieri facias is a lien, and to ascertain any real estate

in or out of this state, to which a debtor named in such fieri facias is entitled, the judgment creditor may file interrogatories to the debtor, and a copy of the judgment with a commissioner of the court wherein the judgment is on the circuit or county court of the county in which the defendant resides, who shall issue a summons directed to the sheriff of his county, commanding him to summon the defendant to answer said interrogatories at a time and place within the county, to be therein specified, not exceeding sixty days from the date of the summons. A copy of the interrogatories shall accompany the summons, and be served therewith on the defendant. The debtor served with such summons and interrogatories, shall within the time prescribed therein file answers upon oath to such interrogatories. If he fail so to do, or file any answers which are deemed by the commissioner to be evasive, the commissioner, after the service and return day of the notice to, or a rule upon the debtor, issued by such commissioner, and returnable to a day and place indicated in the process, to show cause against it, may issue an attachment against such debtor, returnable before him on a day and place certain, set out in it, to compel such debtor to answer the interrogatories aforesaid, or any other which he may deem pertinent. But the said commissioner shall enter in his proceedings and report to the court in which the judgment was rendered, any and all objections taken by such debtor against answering such interrogatories or any or either of them; and if the court shall afterwards sustain any one or more of such objections, the answers given to such interrogatories, as to which objections are sustained, shall be held for naught in that or any other cause.

Interrogatories to be filed with commissioner.

Summons thereon.

Answers: proceed- ings thereon.

Attachment issuable to compel answers.

Objections of debtor to be entered in report of commissioner to court.

5. Any real estate out of this state, to which it may appear by such answers, the debtor is entitled, shall be forthwith conveyed by him to the officer to whom

How compelled to surrender his estate.

To whom.

was delivered the said fieri facias; and any money, bank notes, securities, evidences of debt or other personal estate, which it may appear by such answers are in the possession or under the control of the debtor, shall be delivered by him, as far as practicable, to the same officer, or to such other, and in such manner as may be ordered by the court, when the answers are in court, or by the commissioner when the answers are not in court. Unless such conveyance and delivery be made, a writ shall be issued by the court's order, or if the answers be not in court, by the commissioner directed to the sheriff of any county requiring such sheriff to take the debtor, and keep him safely until he shall make such conveyance and delivery. Upon doing which he shall be discharged by the court under whose order the writ issued, or, if the answers were not in court, by the court by which the commissioner was appointed, or, in either case, if the court be not sitting, by the commissioner.

Report to court by
commissioner

6. The commissioner shall return the interrogatories and answers filed with him, and a report of the proceedings under the two preceding sections, to the court in which the judgment is, or if the judgment be of a justice of the peace, to the county court of the county.

How judgment
debtor about to
leave the state
may be arrested and
held to answer.

7. When a debtor named in a writ of fieri facias, after being served with a summons issued by a commissioner, shall fail within the time prescribed therein, to file answers upon oath to such interrogatories, or shall file answers which are deemed by the commissioner to be evasive, if the judgment creditor shall, by affidavit, show to the satisfaction of the commissioner that there is probable cause for believing that the said debtor is about to quit this state, unless he be forthwith apprehended, a writ shall be issued by the commissioner, directed to the sheriff of any county, requiring such sheriff to take the debtor and keep him safely until such answers to the interroga-

tories as the commissioner deems proper shall be filed, and such conveyance and delivery as he deems proper shall be made, or until a circuit court, or a circuit judge, or a county court, shall direct the debtor's discharge.

8. Any order may be made by such court, which it may deem right, as to the sale and proper application of the estate conveyed and delivered under sections five and six.

Court may make order for sale and proper application of debtor's estate.

9. Real estate conveyed to an officer under this chapter shall unless such court direct otherwise, be sold, after giving at least twenty days notice, by posting the same at the door of the court house of his county and some other conspicuous place, near the residence of the owner, if he resides in the county, or if a newspaper be published in the county be inserted therein for the like term, and be conveyed to the purchaser by the officer or his deputy. An officer to whom there is a delivery under this chapter, when the delivery is of money, bank notes, or any goods or chattles, shall dispose of the same as if levied on by him, under a writ of fieri facias, and when the delivery is of evidences of debts, (other than such bank notes,) may receive payment of such debts within sixty days after such delivery. Any evidence of debt or security remaining in his hands at the end of said sixty days shall be returned by him to the clerk's office of such court. For a failure to make such return, he may be procured against as if an express order of said court for such return had been disobeyed. And the court shall make such order to enforce payment of such debt, or other security as is deemed best.

Officers duty as to sale, &c., of debtor's estate.

When he is to return to clerk's office evidences of debt.

Penalty for failure.

10. On a suggestion by the payment creditor, that, by reason of the lien of his writ of fieri facias, there is a liability on any person other than the judgment debtor, a summons may be sued out of the office of

When by lieu of fieri facias there is a claim on any other person than judgment debtor, summons may be sued out against him: how issued and returned.

*Amended, 2d
p. 28.*

the clerk of the court of the county in which such person resides, against such person to answer such suggestion, the return day of which summons may be the next term of said court.

How such person
examined.

Court's order.

Execution thereon.

11. The person summoned shall be examined on oath. If it appears on such examination that there is any such liability on him, the court may order him to pay any debts, or deliver any estate for which there is such liability, or to pay the value of such estate to any officer whom it may designate, and the levy of an execution on such order shall be valid although levied by such officer.

If he fail to appear
or to disclose his
liability; proceed-
ings thereon.

12. If such person after being served with the summon twenty days fail to appear, or it be suggested that he has not fully disclosed his liability, the court may either compel him to appear or have proof of any debt due by him to, or effects in his hands of the debtor and make such orders in relation thereto, as if what is so proved had appeared on his examination, or if it is suggested by the creditor, that the person so summoned has not fully disclosed the debts due by him to, or effects in the hands of the execution debtor, the court shall cause a jury to be empannelled without any formal pleadings to enquire as to such debts or effects and to proceed in respect to any such found by the jury in the same manner as if they had been confessed by the person so summoned.

Person summoned
may before return
day of summons
deliver to or pay
officer.

Duty of officer in
such case.

When court may
give judgment
against such person
for amount stated.

13. Any person summoned under the tenth section may, before the return day of the summons, deliver and pay to the officer serving it, what he is liable for; and the officer shall give a receipt for, and make return of, what is so paid and delivered. And if it be also suggested as provided for in the tenth section of this chapter that there is a certain sum due from such person to the judgement debtor, and if such person, after being served with the summons twenty days, fail to appear and contest the same, or answer the suggestion, the court may give judgement

against him in favor of the judgment creditor for the amount so stated.

14. Unless such person appear to be liable for more than is so delivered and paid, there shall be no judgment against him for costs,. In other cases judgment under the eleventh and twelfth sections may be for such costs and against such party as the court may deem just.

Judgment as to costs.

15. For the recovery of any estate, real or personal, on which a writ of fieri facias is a lien under this chapter, or on which the judgment on which such writ issues is a lien, or the enforcement of any liability in respect to any such estate, a suit may be maintained at law or in equity, as the case may require in the name of the officer to whom such writ was delivered, or in the name of any other officer who may be designated for the purpose by an order of the court in which the judgment is, or if the judgment be of a justice by an order of the circuit or county court of the county. No officer shall be bound to bring such suit unless bond with sufficient security be given him to indemnify him against all expenses and costs which he may incur or become liable for by reason thereof. But any person interested may bring such suit at his own costs and in the officer's name.

By whom and how suit may be brought for the recovery of estate on which fieri facias or the judgment on which it issues is a lien, or for the enforcement of any liability in respect to such estate.

16. An officer receiving money under this chapter shall, within thirty days after receiving it, make return thereof to the court or to the clerk's office of the court in which the judgment is, or if it was rendered by a justice, to the circuit or county court of the county, and for failing so to do, shall be liable as if he had acted under an order of said court. After deducting from said money, commissions allowed by law, and his necessary expenses and costs, including reasonable fees to counsel, he shall within thirty days pay the net proceeds to the parties entitled thereto, and he and his sureties, and their representatives

Officer receiving money to make return thereof and pay net proceeds. How liable for failure.

shall be liable therefor in like manner as if the same had been made under a writ of fieri facias.

Creditors right to
issue other execu-
tions.

17. Although a judgment creditor, avail himself of the benefit of this chapter, he may nevertheless (without impairing his lien under it,) from time to time issue other executions upon his judgment until the same be satisfied, subject to the limitations prescribed by law.

Commencement.

18. This act shall be in force from its passage.

CHAPTER CCXIX.

AN ACT to amend and re-enact section two of chapter thirteen of the acts of 1872-3, entitled, "An act providing for county courts and defining their jurisdiction, approved December 21, 1872.

Passed December 27, 1873.

Be it enacted by the Legislature of West Virginia:

Acts 1872-3 amend-
ed.

1. That section two of chapter thirteen of the acts of 1872-3 be, and the same is hereby, amended and re-enacted so as to read as follows:

County court :
session of.

Fiscal and police
terms.

Trial of causes.

"2. There shall be held in each county six sessions of the county court every year, two of which shall be limited exclusively to matters connected with the police and fiscal affairs of the county; the other four shall be held for the trial of causes and for the transaction of all other business within the general jurisdiction of the court, except an assessment or levy upon the property of the county.

When all justices to
be summoned.

The justices shall never be summoned except to attend a police and fiscal session, when a levy is to be laid, the county to be re-districted, a vacancy in the office of president of the county court to be filled, and

as provided in the eighth section of this chapter ; and in no case shall the court be composed of more than two justices and the president, or, in the absence of the president, of three justices, except when such levy is made, re-district provided, or vacancy filled ; when in attendance, for the purposes enumerated, the court shall immediately proceed to the consideration of that business, to the exclusion of any other, and continue its consideration until it is disposed of.

When court to be composed of only 2 or 3 justices.

Business to be disposed of by court to the exclusion of any other.

Every county court, designated for the trial of causes, at the first term of said court to be held in the year 1874, or as soon thereafter as practicable, shall fix and determine which two of the six sessions of said county court shall be limited to matters connected with the police and fiscal affairs of the county. But one of the said police and fiscal terms shall exercise the power of auditing and allowing claims chargeable upon the county, and making a levy therefor, except for jury service at the courts for the trial of causes, which may be levied for in advance. No other claim shall be allowed before the services have been actually performed for which the claim is made, unless it arise under an agreement or contract in writing, made in pursuance of law, or an order of the court. There shall never be a contingent fund for any other object than the payment of jurors to be allowed by the court for the trial of causes."

When and how police and fiscal terms determined.

The term to be for auditing claims against county and making levy therefor.

Exception as to jury service.

No other claim allowed in advance unless by contract, &c.

For what object contingent fund allowed.

CHAPTER CCXX.

AN ACT to provide for a re-assessment of the value of all real estate within this state.

Passed December 27, 1873.

Be it enacted by the legislature of West Virginia :

1. There shall be appointed by the auditor, upon

Commissioners.

Auditor to appoint:
When and how.

Duty.

Qualification.

Bond of commis-
sioner.When to be exe-
cuted.Penalty and con-
dition.

How approved.

Oath.

Where bond, &c.,
filed.Duty of clerk of
county court.Failure to give bond
or qualify, &c.Auditor to appoint
successor.

Duty of auditor.

To furnish books,
and necessary in-
structions, &c.

the recommendation of the county court of each county at the first levy term after the passage of this act, one commissioner for each assessment district in the several counties of this state, whose duty it shall be to re-assess the value of all the real estate within the district for which he is appointed, who shall be a resident therein and a free-holder.

2. Each commissioner so appointed shall, within sixty days after he is notified of his appointment, execute a bond in the penalty of three thousand dollars conditioned for the faithful performance of his duties, with security, to be approved by the county court, or the presiding justice thereof, or by a circuit judge, and shall take the oath to support the constitution of the United States, and the constitution of this state, and that he will faithfully discharge the duties of his office to the best of his skill and judgment. The said bond and oaths shall be filed in the office of the clerk of the county court, who shall certify a copy thereof, within ten days after it is so filed, to the auditor, and also furnish the auditor the postoffice address of the commissioner.

If the said commissioner, so appointed, shall fail to qualify and give bond, as herein required within the time prescribed, or in case he shall die or resign before completing his re-valuation, or the office become otherwise vacant, a successor shall be immediately appointed by the auditor, who shall at once give bond and qualify, and enter upon the duties of his office.

3. The auditor shall, as soon as practicable, cause to be provided to each commissioner two books, in form similar to the assessor's land book, with such changes as the nature of the work requires, and shall also furnish each commissioner with instructions, prescribing in detail the manner in which they are to arrive at proper valuations of the real estate, and the manner of making up their books and returns.

4. Each commissioner so appointed and qualified shall, on the first day of April, in the year 1875, or as soon thereafter as practicable, after receiving the books and instructions to be furnished by the auditor as aforesaid, proceed to examine, in person, all the tracts of land and town lots, with the buildings and improvements thereon, within his district, and shall upon examination, and in accordance with his said instructions, ascertain and assess the fair cash value thereof; and in such assessment the minerals underlying the surface shall be considered in ascertaining the value of such land, in current money; and when mineral or coal privilege or grant is held by a party, or parties, exclusive of the surface, the same shall be assessed separately, to such party or parties, at its cash market value. To assist him in ascertaining and identifying the said lands and lots, he shall obtain from the clerk of the county court the land book of the district he is to assess, made for the year 1874; or, if no such book be on file for that year, then the next preceding book on file, and carry it with him for reference in making this assessment.

Assessment; when and how made by commissioner.

5. In all cases where it is practicable, the commissioner shall exhibit the entry of any lands or town lots found on said book, to the owner or agent of the said lands or lots, and ascertain from him if the said entry be correct as to the location, title and quantity, and may require such owner or agent to answer, on oath, questions relative to such lands or lots, and the entry thereof, as may be pertinent.

Commissioner to exhibit entry of lands to owner, &c.

For what purpose.

May require owner to answer on oath.

For this purpose the commissioner shall be authorized to administer said oath. Any person refusing to answer such questions as may be propounded to him, touching these matters, shall be fined not less than twenty dollars, nor more than one hundred dollars, for every such refusal, to be assessed and recovered as other fines, before a justice, and to be paid into the county treasury as other fines are paid.

Authority to administer oath.

Penalty on persons for refusing to answer.

How assessed and recovered.

Where paid.

Commissioner to make two copies of assessment.

6. As soon as the commissioner shall have completed the assessment in his district, he shall make two copies thereof in the books to be furnished him under the provisions of section three of this act, and shall take and subscribe an oath or affirmation to the following effect :

Form of oath to be subjoined to copies.

"I, —, a commissioner appointed to ascertain and re-assess the value of all real estate in the — district of — county, (or in the county of —,) do solemnly swear (or affirm) that I have diligently endeavored to ascertain all the tracts of land and town lots properly chargeable in my district, and have entered the same in the foregoing book ; that I have, faithfully, fairly and impartially, and without bias or favor, assessed the value of the same, with the improvements thereon, at a fair cash value ; and that, in making the said book, I have followed the law and been guided by the instruction furnished me by the auditor for my guidance; so help me God ;"

Before whom taken and subscribed.

Which oath may be taken and subscribed before any person authorized to administer oaths, and a copy of the same shall be subjoined to each of said books properly subscribed and certified ; one of the said books shall be filed by the commissioner with the clerk of the county court of his county, on or before the first day of July, in the year eighteen hundred and seventy-five, and shall be used as a guide to the assessor in making up his land books. The other book he shall transmit to the auditor, on or before the first day of July, in the year 1875.

One book to be filed with clerk ; when.

One filed with auditor ; when.

When and how persons aggrieved by assessment may have same corrected.

7. Any person feeling himself aggrieved by the assessment of his real estate, made under the provisions of this act, may, within one year after the filing of a copy of such assessment with the clerk of the county court apply, by himself or his agent, to the county court for redress, (but no costs shall be taxed for, or against the appellant or the state,) first giving reason-

able notice of his intention to the prosecuting attorney, and stating in such notice the character of the correction he desires. It shall be the duty of the prosecuting attorney, upon being so notified, to attend to the interests of the state, at the trial of such application. If upon hearing the evidence offered by any person aggrieved, the county court, shall be of opinion that there is error in the assessment complained of, or that the valuation fixed by the commissioner is excessive, the said court shall make such order correcting the said assessment as is just and proper; and if upon such application being made, the court shall ascertain that the assessment of value is too low, it shall fix the valuation as the facts require; a copy of all such orders shall be made and certified to the assessor of the district by the clerk within twenty days after the entering of the same; such applications shall have precedence of all other business before the court except proceedings in criminal cases.

No costs to be taxed

What notice must state.

Duty of prosecuting attorney.

Duty of court in relation thereto.

Order of court to be certified to assessor.

To have precedence of all cases, except criminal.

8. For services rendered under this act by the commissioner, he shall be allowed for each day actually and diligently employed, three dollars to be paid out of the treasury.

Compensation of commissioner.

But such account shall be verified by the affidavit of the commissioner before presenting it to the court; which account shall be presented, to the county court, approved, allowed and certified to the auditor for payment: Provided, That the total compensation of such commissioner shall not exceed two hundred and fifty dollars. Any officer who shall fail or refuse to perform any of the duties required of him by this act or who shall make an improper or unfair valuation of any property through fear or malice, or shall receive money or other consideration for making an unfair or partial valuation of any property shall be guilty of a misdemeanor, and upon conviction thereof, be fined not less than twenty dollars, nor more than five hundred dollars.

Account to be referred.

How paid.

Proviso is to compensation.

Penalty on officer for failure to perform duty; making unfair or impartial valuation.

Penalty for delay.

9. Every commissioner who shall fail to comply with the requisitions of this act within the time herein specified, shall forfeit all right to compensation for his services, unless, and until, he show to the auditor on oath, satisfactory reasons for delay.

Boards of commissioners established in lieu of county courts to have same powers, &c., in carrying out provisions of this act.

10. In every county where boards of commissioners have been established in lieu of county courts, for police and fiscal purposes, the said boards shall have the same powers and perform the same duties as are imposed upon the county courts, in carrying out the provisions of this act.

Commencement.

11. This act shall be in force from its passage.

CHAPTER CCXXI.

✓ AN ACT amending and re-enacting section one of chapter sixty-nine of the acts 1872-3, concerning insurance companies.

Passed December 27, 1872.

Be it enacted by the Legislature of West Virginia :

Acts 1872-3 amended

1. That section one of chapter sixty-nine of the acts of the Legislature of 1872-3, approved March 29, 1873, entitled, "an act to amend and re-enact section two of chapter thirty-four of the code of West Virginia, and to repeal so much of an act passed February 25, 1871, and of sections three and thirteen of chapter thirty-four of the said code as is inconsistent, or in conflict herewith, relating to insurance companies," be, and the same is hereby amended and re-enacted so as to read as follows :

"1. Section two of chapter thirty-four of the code of West Virginia, is hereby amended and re-enacted so as to read as follows:"

"2. It shall not be lawful for any officer or agent of any fire or marine insurance company, directly or indirectly, to take risks, or issue policies of insurance within this state, without first procuring from the auditor a certificate as hereinafter directed. Before obtaining such certificate, such company, its officers, or agents, shall furnish the auditor with a statement under oath of the president or secretary of the company for which he or they may act, which statement shall show :

Unlawful to take risks or issue policies without certificate from auditor.

State to be furnished auditor.

FIRST. The name and locality of the company ;

SECOND. The amount of its capital stock ;

THIRD. The amount of its capital stock paid up ;

FOURTH. The assets of the company; including, first, the amount of cash on hand, and in the hands of agents, or other persons ; second, the real estate unincumbered ; third, the bonds owned by the company ; and how they are secured, with the rate of interest thereon ; fourth, debts due to the company secured by mortgage or otherwise ; fifth, debts for premiums ; sixth, all other securities ;

FIFTH. The amount of liabilities due or owing to the banks or other creditors by the company ;

SIXTH. Losses adjusted and due ;

SEVENTH. Losses adjusted and not due :

EIGHTH. Losses unadjusted ;

NINTH. Losses in suspense, waiting for further proof ;

TENTH. All other claims against the company ;

ELEVENTH. The greatest amount insured in any one risk ;

Which statement shall be filed in the office of the said auditor. No foreign insurance company, or agent thereof, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual capital,

To be filed.

Required capital of foreign companies.

How to be invested,
 &c.

Auditor to examine
 condition of such
 companies.

May revoke certi-
 ficates; when.

Deposits of money
 or securities re-
 quired in certain
 cases.

b pa'd.

invested in the stock or bonds of some one or more of the states of this union, whose bonds are at par, or of the bonds of the United States, at the current market value thereof at the date of such statement, or in bonds secured by mortgage or deed of trust on real estate, worth double the amount for which the same is mortgaged, free from any prior incumbrance, and having undoubted title. The auditor shall be authorized to examine into the condition and affairs of any foreign insurance company doing business in this state, or cause such examination to be made by some person or persons appointed by him having no interest in any insurance company, and whenever it shall appear to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he shall revoke the certificate granted in behalf of such company, and shall cause a notification thereof to be published in some newspaper of general circulation published at the capital of this state, and the agent or agents of such company are on, and after such notice required to discontinue the issuing of any new policy, or the renewal of any previously issued. When by the laws of any other state, any deposits of money or of securities, or other obligations or prohibitions, are imposed or would be imposed on insurance companies of this state doing, or that might seek to do business in such other state, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions of whatever kind, shall be imposed upon all insurance companies of such other state, doing business within this state, or upon their agents here. Every foreign insurance company doing business in this state at the time of making the annual statement as required by law, shall pay into the state treasury as taxes, three per cent of the gross amount of premiums received in this state during the previous year, taking duplicate receipts therefor, one of which shall be filed with the auditor, and upon the filing of said receipts, and

not till then, the said auditor shall issue the annual certificate as provided by law, and the said sum of three per cent shall be in full of state taxes only: Provided, That any foreign life stock insurance company, which shall invest in this state the whole amount of its net receipts from its business therein, shall pay only one-third of the aforesaid rates."

When auditor to issue annual certificate.

Provide as to foreign life stock insurance companies.

"4. No officer or agent of a foreign insurance company shall make, renew or negotiate in this state any insurance or contract for insurance, on behalf of such company, or transact any business for such company, directly or indirectly, without first obtaining the auditor's certificate of authority as required by law; and this applies to all persons engaged in any manner in soliciting risks, insuring or obtaining the issue of policies, selling tickets of insurance, or otherwise doing business of insurance, either by direct appointment from a company or as such agent."

Offices or agents of foreign insurance companies engaged in any manner in soliciting risks, &c. to first obtain auditor's certificate of authority.

CHAPTER CCXXII.

AN ACT to amend and re-enact sections twenty-two, twenty-six and thirty of chapter seventy-seven of the code, concerning wills.

Passed December 27, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections twenty-two, twenty-six and thirty of the code be amended and re-enacted so as to read as follows:

Code amended.

"22. The circuit and county courts shall have jurisdiction to hear and determine suits and controversies concerning wills, according to the following rules, that is to say: in the county wherein the deceased has a mansion house or known place of residence;

What courts have jurisdiction in suits &c. concerning wills.

if he has no such house or place of residence, then in a county wherein any real estate lies that is devised or owned by the decedent; and if there be no such real estate, then in the county wherein he dies, or a county wherein he has estate."

Power of court as to other testamentary papers.

Trial by jury.

When to proceed without a jury.

Final order as to probate to be certified to clerk of county court.

Will preserved in clerk's office, and recorded.

Exception.

Commencement.

"26. In every such proceeding the court may require all testamentary papers of the same decedent to be produced. If any person interested ask it, it shall order a trial by jury, to ascertain whether any, and if any, which of the papers produced be the will of the decedent; and if no such trial be asked, shall proceed without it to decide the question of probate. The court shall make a sentence or final order as to the probate, and certify the same to the clerk of the county court."

"30. Every will or authenticated copy thereof, admitted to probate under the provisions of this chapter, shall be recorded by the clerk of the court in which the probate was had, and when recorded shall remain in the office of such court, except when removed therefrom under a subpoena duces tecum."

2. This act shall be in force from its passage.

CHAPTER CCXXIII.

AN ACT for the relief of Daniel Looney, one of the sureties of John W. Spencer, late Sheriff of Roane county.

Passed December 27, 1873.

Be it enacted by the Legislature of West Virginia:

1. That Daniel Looney may place any uncollected taxes and fee bills which were put in the hands of

said Spencer as sheriff as aforesaid, or in the hands of his deputies, for collection, as well as uncollected fee bills of said Spencer as sheriff as aforesaid, into the possession of the sheriff of any county where the party owing the same may reside, for which fee bill and taxes aforesaid, the said several sheriffs shall give to said Looney a receipt; that the several sheriffs receiving any of said taxes and fee bills shall have all the power given by law to enforce the collection of taxes and fee bills in other cases in their respective counties; and shall be liable to said Looney in all respects to the same proceedings provided by law against sheriffs for failure to pay over money collected by them for any part of said taxes and fee bills collected by them and not paid to said Looney.

Daniel Looney authorized to collect uncollected fee bills and taxes which were in the hands of John W. Spencer late sheriff.

Sheriff to receipt to Looney therefor.

Power of sheriffs to enforce collection.

Liability to pay owner.

2. That the auditor of the state, upon the application of said Daniel Looney, may postpone the collection of the judgment of the State of West Virginia against said John W. Spencer and his sureties as to the said Daniel Looney, for the period of two years from the passage of this act, on such terms and conditions as the said auditor may regard as just to the state; and may at the same time protect the said Looney against the sacrifice of his property to pay the same; and the said auditor may from time to time enter into such other and further arrangements with said Looney as the auditor may think expedient and proper, to enforce payment in part of said judgment to be made by the co-sureties of said Looney as well as by the said John W. Spencer, in whole or in part; but such part payment and arrangements shall in nowise be construed as a relief of any or either of the co-sureties from their liabilities as such surety.

Auditor authorized to postpone collection of judgment as to said Looney for two years.

May enter into other and further arrangements, with said Looney, as to co sureties.

How construed.

3. This act shall be in force from its passage, and shall continue to be in force for the period of two years only, except as to the portion thereof which authorizes proceedings against delinquent sheriffs,

Commencement.

To continue in force for two years, except as to delinquent sheriffs.

which shall continue until all are fully accounted for and paid.

CHAPTER CCXXIV.

AN ACT to provide for a preliminary survey of the Guyandotte railroad.

Passed December 27, 1873.

Be it enacted by the Legislature of West Virginia:

Authority to employ engineer, &c.

1. That it shall be lawful for the Guyandotte railroad company to employ a skillful and competent civil engineer; and for such engineer, with the approval of a majority of the company, to employ such number of assistants and aids as may be necessary to carry out the work hereinafter mentioned.

Duty of the said engineer as to the survey.

2. The said engineer shall select and survey the most practicable route for the construction of a railroad, keeping in view the general direction indicated in the articles of incorporation of such Guyandotte railroad Company, adopted April 14, 1873, for the building of a railroad from the Ohio river, in Cabell county, up the valley of the Guyandotte river. The said engineer shall be required to report from time to time, as the work progresses, keeping strictly in view the general course indicated in the articles of incorporation aforesaid.

His pay; when and how fixed.

3. The pay of said engineer shall be fixed by said company, when such survey shall have been completed and approved by a majority of said company: he shall report to the company the course and distance, with the grade, cuts and fills, and any other thing relating to the completion of said road; and to

His report.

carry out the provisions of this act, the sum of three thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, to be drawn, used and accounted for by said company in accordance with the foregoing provisions.

Appropriation.

How drawn, used and accounted for.

CHAPTER CCXXV.

AN ACT supplemental to an act entitled, "an act to provide for the incorporation of associations that may be organized for the purpose of constructing railroads, maintaining and operating the same ; for prescribing and defining the duties and limiting the powers of such corporations when so organized."

PASSED December 27, 1873.

Be it enacted by the Legislature of West Virginia:

1. That the provisions of an act, entitled, "an act to provide for the incorporation of associations that may be organized for the purpose of constructing railroads, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so organized, approved April 3, 1873, be and the same, (so far as applicable,) are hereby extended to the transportation of petroleum in the counties of Wood, Pleasants and Ritchie; and that any company organized for such purposes, under the provisions of said act, shall have the right to transport, store, insure, and ship petroleum, and for that purpose to lay down, construct and maintain pipes, tubing, tanks, offices and such other machinery, devices or arrangements as may be necessary, and to enter upon, use and occupy such lands as may be required for the purposes of the company;

Provisions of act incorporating associations for constructing, &c., railroads, extended to the transportation of petroleum in certain counties.

Rights of company organized for such purposes.

and for rights of entry upon lands, right of way and the use of materials necessary to the construction, maintenance and operation of said lines of pipes and fixtures as aforesaid, they shall be entitled to all the rights and privileges, and be subject to all the limitations and restrictions of railroad companies as contained in the act aforesaid relating to railroad companies: Provided, however, that nothing herein contained shall be construed to authorize the construction of any railroad, or the condemnation of more land than may be necessary for depots and pumping-stations, and to lay down and keep in repair said line of pipes.

Proviso.

Quantity of land to be condemned, limited.

Company may change location of pipes, or construct branches; how.

2. That any company organized under the provisions of this act, may at any time change the location of the whole or any part of their pipes, or construct a branch or branches from any point or place within the counties aforesaid; but, before doing so, a majority of the directors of said company shall make or cause to be made a certificate, in writing, setting forth the proposed change, particularly setting forth the proposed routes and termini, and have the same executed, acknowledged and recorded in like manner as the original articles of incorporation.

CHAPTER CCXXVI.

AN ACT to reduce into one the laws defining the jurisdiction, powers and duties of justices of the peace and constables.

Passed December 27, 1873.

Be it enacted by the Legislature of West Virginia:

1. The jurisdiction of justices and the powers and duties of constables shall extend throughout their counties.

Jurisdiction extends throughout county.

2. Justices may take and certify the acknowledgment of deeds, contracts and all other writings that are to, or may be recorded, and administer and certify any oath required to be taken which is not of such a nature that it must be taken in court, unless otherwise provided.

May take and certify acknowledgment of deeds, &c. and administer oaths.

3. The civil jurisdiction of justices of the peace shall extend to actions of assumpsit, debt detinue, and trover if the amount claimed exclusive of interest does not exceed one hundred dollars, even if the claim be for or against the town or county in which such justice resides. But in every case where the

Civil jurisdiction.

sum in controversy exceeds the amount or value of twenty dollars, the justice of the peace shall, upon the application of the defendant, either in person or by counsel, made at any time before trial, transmit the papers in the case to the clerk of the county court to be therein tried; and the clerk of the said

When and how case removed to county court for trial.

court shall docket the same, and it shall there be tried as if it were a case originally brought in said court, but no pleading in writing need be filed unless ordered by the court. They shall also have jurisdiction of action of covenant and of trespass to personal and real property when the damages claimed do not exceed one hundred dollars, as well as actions of unlawful entry and detainer; and in all such actions, where the amount in controversy exceeds twenty dollars, at any time before trial, the justice shall, upon application of the defendant, transmit the same, together with the papers filed by either party, to the county court, there to be proceeded in as

How tried.

aforesaid. But in cases of unlawful entry and detainer, if the defendant elects to remove the case to the county court as aforesaid, he shall execute a bond with approved security, before the justice, conditioned that he will perform and satisfy any judgment that may be rendered against him in said court on the trial of said cause: Provided, however, that when

Jurisdiction in actions of a covenant and trespass.

Also actions of unlawful entry and detainer.

How and when removed to county court for trial.

Proviso as to bond.

the damages claimed by the plaintiff exceed twenty dollars such bond shall not be required.

When party may release excess and take judgment for residue.

4. When a balance is found in favor of a party upon a hearing before the justice, exceeding the sum for which a justice is authorized to give judgment, such party may release the excess and take judgment for the residue.

Proceedings in cases where justice interested, &c.

5. If the justice be a party to a suit or be interested in the result thereof, or be related to either of the parties, as father, grandfather, father-in-law, son, son-in-law, brother, brother-in-law, nephew, uncle or first cousin, guardian or ward, or be a material witness for either party, he shall not take cognizance thereof unless all the parties to the suit consent thereto in writing.

Process may be directed to any constable in county

6. If the justice has jurisdiction of the action, any lawful process, order, or notice therein, unless otherwise specially provided, may be directed to any constable of the county or to any person specially deputed by the justice to serve or execute the same; and the officer or person to whom it is directed may serve or execute the same anywhere within his county, or upon any river or creek adjoining thereto. It may be directed to the constable by name or by his official designation without naming him.

How directed,

Justices' jurisdiction of action.

7. A justice shall have jurisdiction of actions when the cause thereof arose in his county, or the defendant, or one of the defendants, resides therein; or, being a non-resident of the state, is found or has effects or estate therein.

Jurisdiction in action on penal bonds.

8. When the action is on a penal bond, the amount of damages claimed for the breaches alleged, and not the penalty, shall be considered in determining the question of jurisdiction.

Also in action on bonds; who may bring suit.

9. Justices shall have jurisdiction of actions on bonds given pursuant to this act; and such suit may be brought on any such bond before the justice or court

having jurisdiction, by and in the name of any person sustaining loss or damage by reason of the non-performance thereof.

10. Actions before justices are commenced by summons, or by the appearance and agreement of the parties without summons. Any action so commenced by agreement shall be proceeded with to trial, judgment and execution, in the same manner and with like effect, as if the same had been commenced by summons. In the former case the action is commenced upon the delivery of the summons to be served, and the constable shall note thereon the time of receiving the same. In the latter case the action is commenced at the time of docketing the case.

Actions before justices; how commenced.

When commenced.

11. Any plaintiff or defendant in an action before a justice, unless he be under twenty-one years of age, may appear and conduct his suit or defense in person or by agent or attorney.

Adult party may appear by agent or attorney.

12. No minor shall bring an action except by a next friend, nor shall such action be commenced unless on the personal application of such next friend, in writing, filed with the justice. If he fail in the action he shall pay the costs. If a minor be sued, the justice shall appoint a guardian ad litem, to defend him, and such guardian ad litem shall consent to act as such before the trial; Provided, That if such minor is over fourteen years of age he may appoint his own guardian ad litem. When a suit has been commenced by a minor all notices to be given by the defendant shall be served upon the next friend of such minor, and such service shall also be served on him. When any process, notice or order is to be served on a minor defendant, a copy thereof shall be delivered to his guardian ad litem, and, if he have a guardian, upon him also; if he have no guardian, upon his father, mother or elder brother, if he have one residing in the county; and if such defendant be over fourteen years of age, a copy shall be

How a minor shall bring an action.

When to pay costs.

Guardian ad litem for minor; when and how appointed.

How notice served upon minor plaintiff.

How on minor defendant.

Guardian not
liable for costs.

issued upon him also. In no case shall the guardian ad litem be liable for costs.

Suits in partner-
ship name.

13. Persons associated as partners in any trade or business may sue as such before a justice in the firm name by which such partnership is usually known; and it shall not be necessary to allege or prove in such suit who are the persons composing the partnership.

Form and requisites
of summons.

14. The summons to answer before a justice shall be in form or in substance as follows:

— county to wit: To any constable in said county: You are hereby commanded, in the name of the State of West Virginia, to summon A. B. to appear before me, or some other justice, at my office, in —, in the said county, on the — day of —, at — o'clock, A. M., (or P. M.,) to answer the complaint of C. D., in a civil action for the recovery of money due on contract, (or for damages for a wrong, as the case may be,) in which the plaintiff will demand judgment for \$—.

Given under my hand this — day of —, 18—.

E. F., Justice.

The summons may be made returnable at any time within thirty days from its date.

Action of unlawful
detainer; where
brought.

15. The action of unlawful detainer may be brought when any forcible or unlawful entry is made upon land, or when, if the entry was lawful, the tenant detains possession of land after his right has expired, without the consent of him who is entitled to the possession, by the party so turned or kept out of possession, no matter what right or title he had thereto, within two years after the cause of action accrues.

Proceedings
thereon.

At the instance of the party so turned out of possession, or against whom possession is unlawfully detained as aforesaid, the justice shall issue a sum-

mons commanding the officer to summon the defendant to appear before the said justice, at a time and place therein specified, to answer the action of the plaintiff for unlawfully withholding from the plaintiff the premises in question (describing them,) and damages for their detention (if any are claimed.) The time within which the defendant is to appear must not be less than five nor more than ten days from the delivery of the summons to the officer to be served.

If the finding of the justice be that the defendant unlawfully withholds the premises in controversy, or any part thereof, (describing the part) from the plaintiff, judgment shall be rendered in favor of the plaintiff that he recover possession of the premises, or of the part so described, and his costs. If damages are assessed by the justice in favor of the plaintiff, the same shall also be included in the judgment, and the justice, when required by the plaintiff, shall issue an execution commanding the officer to whom it is directed to deliver possession of the premises, or such part thereof, to the plaintiff, and remove the defendant and his goods therefrom, and collect the said damages and costs out of the personal property of the defendant. Such execution shall be returnable within sixty days from its date, and as to the delivery of possession and removal of the tenant and his goods, it shall be executed within ten days from the time it comes into the hands of the officer.

Execution : when issued : when executed and returnable.

If it be for the recovery of personal property it shall state the cause of action as follows :

For the recovery of the possession of one horse, (or one cow, &c., according to the facts,) of the value of \$—— and \$—— for the retention thereof; and if it be for any other kind of action it shall state succinctly and fully the ground of action, and no summons shall be quashed or set aside for any defect therein, if it be sufficient on its face to show what is intended thereby.

Requirements of summons for recovery of personal property.

When separate
summons may is-
sue against persons
sued jointly.

16. When two or more persons are jointly liable to the action, a separate summons, if the plaintiff require it, may be issued at the commencement of the action against any one or more of them, and be directed and served as provided in the sixth section, but the summonses issued to commence the action shall all be returnable at the same time, and the summons against every defendant must state who are sued with him.

How party may be
designated in sum-
mons, where his
right name is not
signed to paper or
is unknown.

17. When a party to any note or instrument of writing has signed or endorsed the same with the initials or some contraction of his name, or of his first name, he may be designated in the summons as he is in such signature or endorsement, if suit be brought thereon.

When the name of a defendant is not known to the plaintiff, the summons may be issued against such defendant by a fictitious name, or any description to designate the person intended, and shall not be set aside or dismissed for that cause if served on the proper person; but the justice, when the truth shall appear, shall enter the true name in his docket, and thereafter proceed as if such defendant had been sued by his true name.

When new sum-
mons may issue.

18. A new summons may, if the plaintiff desire it, be issued, where there has been no service of the previous summons, or no return made thereof. It shall be endorsed by the justice issuing the same, "second summons," or "third summons," as the case may be

Service of process;
how made.

19. If the defendant be found, the process, order or notice, unless person or property is to be taken in custody, or it be otherwise specially provided, shall be served by reading the same to him, or stating its contents and informing him of the time and place at which he is required to appear and answer the action, or by delivering him a copy thereof; and such copy shall always be furnished if demanded. If he be not

found, it may be served at his usual place of abode, by delivering a copy thereof and giving information of its purport to his wife; or, if she be not found there, by delivering such copy and giving information of its purport to any person found there, who is a member of his family and above the age of sixteen years; or, if no such person be found there, by posting a copy thereof on the front door of such abode.

20. An acknowledgment in writing of the service of such process, order or notice, by the defendant, his agent, or his attorney, or his appearance to answer the action, shall be equivalent to personal service. Service by written acknowledgment.

21. Unless otherwise specially provided, such process or order, and any notice against a corporation may be served upon the president, cashier, treasurer, or chief officer thereof; or, if there be no such officer, or he be absent, on any officer, director, trustee, or agent of the corporation at its principal office or place of business. How made on corporations.

22. If the suit be against a foreign corporation, insurance or express company, doing business by an agent in this State, service may be made by delivering a copy of the process, order, or notice to such agent, or leaving such copy at the office or place of business of such corporation, with any person found at the time in charge thereof, and if no person be found at such place of business it shall be posted as provided for in section eighteen. How made on foreign corporations, &c.

23. Service on foreign insurance or express companies may be made in the manner specified in the preceding section, or as provided in the fifteenth section of chapter thirty-four of the code. How made on foreign insurance and express companies.

24. If a suit against a bank of circulation be brought in the county where it has a branch, service on the president or cashier of the branch shall be sufficient. How made in suit against bank.

Where service must be made; what return must show.

25. Service on any person under either of the last four sections shall be in the county in which he resides; and the return must show this, and state on whom and when the service was; and such service must be ten days at least before the trial, otherwise the service shall not be valid.

26. In actions against a county the process shall be served on the president of the county court.

Arrest of defendant before trial; order for, how obtained and for what causes.

27. An order for the arrest of a defendant in a civil action may be made by the justice before whom the action is brought, when there is filed in the office an affidavit of the plaintiff or any credible person, made before any person authorized to administer oaths, showing to the satisfaction of the justice the nature of the plaintiff's claim, that it is just, the amount thereof, as near as may be, and the existence of one or more of the following particulars:

First, That the defendant is removing out of the state, or so absconds and conceals himself that process cannot be served upon him; or,

Second, That the defendant has money or effects that cannot be reached by attachment or execution; or,

Third, That he fraudulently contracted the debt for which the action is to be or has been brought.

Plaintiff must file bond with security before order issued.

28. The order of arrest shall not be issued until there has been executed by one or more sufficient parties, and delivered to the justice, a bond to the effect that the plaintiff will pay the defendant all damages he may sustain, by reason of the arrest, should it thereafter appear that the order was wrongfully obtained, not exceeding double the amount of the plaintiff's claim as stated in the affidavit.

When order may issue and how directed.

29. The order of arrest may accompany the summons or be made at any time afterwards. It may be directed like a summons, but shall not be executed out of the county in which the action is brought.

It shall state the names of the parties, the amount of the plaintiff's claim, as stated in the affidavit, be signed by the justice issuing it, and require the person who is to execute it, to arrest the defendant and bring him forthwith before the justice.

What order must state; how signed, and what required.

30. The officer receiving the said order shall forthwith arrest the defendant; and, unless the plaintiff's claim and the costs are paid, or the defendant is discharged by order of the plaintiff, take him forthwith before the justice, and keep him in custody until discharged according to law.

When officer to arrest defendant and take him before a justice.

31. Upon the return of said order executed, the trial shall proceed, unless for good cause shown on the application of either party, or at the instance of the justice himself, the same is continued. If the trial be continued for any period, the defendant shall be discharged from custody upon executing, with one or more sufficient sureties, a bond to be filed with the justice, to the effect that if judgment be rendered in the action against the said defendant, he will either satisfy the same or render himself to answer the process, on such judgment. But in no case shall the defendant be detained in custody where such continuance is for more than forty-eight hours, unless it was made at the instance or with the consent of the defendant himself.

When trial to proceed.

If trial continued, defendant may be discharged from custody.

When not to be detained in custody more than forty-eight hours.

32. If a person who intends to bring an action before a justice is not a resident of the state, the justice shall require security for the costs before issuing the summons. And when a plaintiff, after suit is begun, removes from the state, the justice may also require security as well for the costs already accrued as for those that may accrue thereafter. If the plaintiff fail to comply therewith, the justice may dismiss the suit and give judgment against him for costs.

When justice may require plaintiff to give security for costs.

Security for costs may be given either by depositing with the justice such sum as the latter shall deem sufficient, or by a bond signed by sufficient

Security for; how given, &c.

parties, to pay to the justice the costs incurred at his instance, when demanded, and that if judgment be given against him in the action, he will pay the defendant's cost when demanded.

**Actions before
justice; how tried.**

33. Actions before justices shall be tried in a summary way and without formal pleadings.

**In what cases an-
swer of title may
be filed.**

34. If the defendant in any action brought before a justice, claims that the title to real property will come in question therein, he may, either with or without other matter of defense, set forth in his answer the facts showing that such title will come in question on the trial thereof. Such answer shall be in writing and shall be verified by the affidavit of the defendant, or his agent or attorney. Upon the filing of such answer, if the justice be of opinion that the facts therein stated show that the title to real property will so come in question, he shall dismiss the action at the cost of the plaintiff, unless the plaintiff, or his agent or attorney, shall file an affidavit denying the truth of such allegation, in which case the action shall not be dismissed. If, however, it shall appear on the trial of the cause, that the title to real property is properly in question between the parties, the justice shall dismiss the action at the costs of the plaintiff. But if no such answer of title be filed by the defendant, the justice shall have jurisdiction of the cause, and the defendant shall not be permitted, in his defense, to dispute the title of the plaintiff to the premises in question.

**When cause to be
dismissed, and
when not.**

**If such answer be
not filed, justice to
have jurisdiction,
&c.**

**Bonds, notes, &c.,
sued on must be
filed with justice.**

**Duty of justice in
such cases**

35. If the action of the plaintiff, or the credit or set-off of the defendant, be founded on any bond, premissory note, bill of exchange, or other instrument of writing, it shall be filed with the justice, unless good cause be shown why it cannot be so filed: and when judgment is rendered, he shall endorse upon such instrument the title of the suit and the amount allowed in the judgment to the plaintiff or

defendant on account of the same. If the instrument be payable in installments, he shall also specify in the endorsement, for which of the installments such allowance was made.

And no suit or suits shall thereafter be instituted between the same parties, or those claiming under them, for the matter so adjusted and decided. The justice shall retain the instrument and file it with the papers relating to the suit, unless an appeal be taken from the judgment, in which case the same shall be transmitted to the clerk of the court to which the suit is transferred by the appeal, or unless he grant leave to the person entitled thereto to withdraw such instrument, on filing a copy for the purpose of recovering another installment, or bringing suit thereon against a different party.

36. If the plaintiff's demand in the action be founded on judgment or contract, express or implied, the defendant in the following cases may set off demands which he has against the plaintiff:

First, The demand to be set off must be founded on judgment or contract, express or implied.

Second, If it be founded on a bond or other contract, sealed or without seal, having a penalty, the sum equitably due by virtue of its condition, and not the penalty, shall be set off.

Third, It must have belonged to the defendant at the time the plaintiff's suit was commenced.

Fourth, If the plaintiff's demand be against several defendants, the set-off must have belonged to all the said defendants jointly, at the time the suit was commenced.

Fifth, If there be several plaintiffs suing jointly the set-off must be a joint demand against them all.

Sixth, If the plaintiff be merely a trustee for another, or if the suit be in the name of a plaintiff

Set off: in what cases allowed

who has no real interest in the claim sought to be thereby enforced, the set-off must be a just claim against those whom the plaintiff represents, and for whose benefits the suit was brought. A claim against a nominal plaintiff shall not, in such case, be allowed as a set-off.

Seventh, In suits brought by executors or administrators for any cause of action existing at the time of the death of the person they represent, whether then due and payable or not, the set-off must be a just claim against the deceased, or against his estate in the hands of the said representatives. But if such suits be founded on any transaction or contract subsequent to the death of the testator or intestate, claims against the deceased which existed in his life time, shall not be set off without the assent of his executors or administrators.

Plaintiff may file counter set-off.

Eighth, The claim to be set-off must be due, and payable at the time of trial. But the plaintiff in such cases may file and prove any counter set-off or counter claim, he may hold against any set-off or counter claim filed by the defendant, and may make such other defence thereto as he might have made had an original action been brought upon such set-off or counter claim; and upon a trial, the true state of the claims of the parties shall be ascertained, and judgment rendered accordingly.

Judgment in such cases.

Judgment in case defendant's claim equal plaintiff's.

If less; what then.

If more what judgment defendant may have.

37. If the claim of the defendant proved on the trial be equal to that of the plaintiff, judgment shall be entered for the defendant with costs unless it appear to the justice that the plaintiff had asked for a settlement and the defendant had refused it. If it be less the plaintiff shall have judgment for the residue only, with costs. If it be more, and the balance found due to the defendant from the plaintiff do not exceed one hundred dollars, exclusive of interest and costs, or the defendant release the excess, judgment

shall be rendered for the proper amount in favor of the defendant, with or without costs as the justice may deem proper and just, and execution be awarded thereon, as if the judgment had been obtained in an action brought by the defendant.

38. If the balance found due the defendant exceed the amount to which the jurisdiction of the justice is limited, and the defendant do not release the excess judgment shall be rendered for costs as the justice may deem proper and just, and the defendant may thereafter recover the balance due him in any court having jurisdiction.

What judgment if sum found due exceeds jurisdiction of justice, and excess not released.

39. If the defendant, at the time the plaintiff's action is commenced, has any credit, or set-off, or counter claim to allege in defence or reduction of the plaintiff's demand, and be personally served with the process in the suit, or appear and answer the action he shall produce the same, with his evidence in support thereof, in the cause, or be forever precluded from maintaining any action for the recovery thereof. And if the plaintiff in the causes provided for in the thirty-sixth section, has any credit, set-off or counter claim to allege in defense or reduction of the defendant's set-off, or counter claim, and fail to produce and claim the same, he shall, in like manner be forever precluded from maintaining an action for the recovery thereof.

When defendant must file set-off, or forfeit his claims.

any where, or in jurisdiction
Provision as to plaintiff's counter claim, &c.

40. The preceding section shall not however apply to the following cases:

To what cases provisions of preceding section do not apply.

First. When the set-off or counter claim shall exceed the plaintiff's demand more than one hundred dollars, exclusive of interest.

Second. When the set-off consists of a judgment rendered before the commencement of the suit in which the same might be set-off.

Third. Claims in suit before any other court of stice at the time of the commencement of the action:

Provided in cases where amount claimed is less than \$20, and set-off amounts to more.

Provided, That in all cases where the amount claimed by the plaintiff is less than twenty dollars and the set-off amounts to more than twenty-dollars, the defendant may remove the case to the county court in the same manner as cases removed to such court under the third section, and it shall be proceeded in to final trial, as if it were a case removed under that section.

When defendant may proceed to trial, &c.

41. In cases in which a defendant has filed a set-off or counter claim he may proceed to trial, though the plaintiff fail to appear, or dismiss his action.

When defendant may demand continuance of cause.

42. On the day the summons is returnable, the defendant, upon making oath that he has just defense to the suit, or is justly entitled to a credit or set-off not admitted by the plaintiff, may demand of right a continuance of the cause for seven days.

Justice may continue of his own motion; when and how long.

43. On the return day of the summons, if the defendant be not in custody, the justice may, without the consent of either party, continue the cause for not over seven days, but he shall not exercise this privilege at any other time, unless in case of sickness or necessity. If the defendant be in custody, he shall be discharged therefrom, if the cause be continued for more than forty-eight hours, without his consent.

When defendant discharged from custody.

When cause may be continued on application of either party, and for what.

44. When the defendant is not in custody, the justice, on the return day, or any subsequent time appointed for the hearing, may continue the cause, on application of either party, without the consent of the other, on the applicant showing by his oath, or otherwise, that he cannot safely proceed to trial for want of some material paper, evidence or witness, and that he has used due diligence to procure the same, and will probably be able to do so if time be granted. The continuance shall, in such case, be for a reasonable time, to enable the applicant to obtain the paper, evidence or witness referred to.

To be for a reasonable time.

45. But unless both parties consent, no continu.

ance shall be granted to a time beyond three months after the return of the summons served.

Not to be beyond three months without consent

46. Every continuance, on the application of a party shall be at his costs, except good cause be shown to the contrary. When one party has subpoenaed his adversary to testify as a witness, and he fails to attend or refuses to testify, if the cause is continued on account of such failure or refusal, the party subpoenaed shall pay the costs occasioned thereby, unless good cause be shown for such failure or refusal.

Applicant to pay costs of continuance.

Exception.

47. If the justice who issues the summons is, from any cause, unable to attend on the return day or on any day to which the case may have been continued, any other justice of the county may attend and proceed with the case as if he had issued the summons. No action shall be discontinued. If no justice attend on the return day of the summons nor at the time to which it stands continued it shall stand adjourned for one week, and so on from week to week until disposed of: Provided, That such adjournments shall not in all be for a longer period than one month.

If justice issuing summons fail to attend, another may attend and proceed with case.

No action shall be discontinued.

If no justice attends case to stand adjourned from week to week, &c.

Proviso.

48. At the time appointed for the trial of a case before a justice, he shall hear the evidence and decide according to the rules of law and equity. In no case shall a jury be allowed.

Trial of cases by justice.

No jury allowed.

49. Saving the right of a defendant who has filed a set-off or counter claim to proceed to trial, though the plaintiff fail to appear, or dismiss his action, judgment may be rendered against the plaintiff dismissing his action:

When and in what cases judgment may be rendered against plaintiff.

First. If he fail to appear and prosecute his action.

Second. If he fail to file his complaint at or before the time the summons is returnable.

Third. If he fail or refuse to testify when properly required to do so.

Fourth. If he fail to give security for costs when properly required to do so.

Fifth. If the summons be defective or erroneous and cannot properly be amended.

Sixth. If the plaintiff himself dismiss his action.

In what cases plaintiff may show cause against dismissal.

To be dismissed at plaintiff's costs, if justice has not jurisdiction.

But in the first, second and third class of cases, the plaintiff may show cause, if he can, why his action ought not to be dismissed. The action shall also be dismissed at the plaintiff's costs whenever it appears that the justice has not jurisdiction thereof.

Judgment for failure to appear, &c. may be set aside; when and how.

50. The judgment against the plaintiff for failure to appear or file his account or give security for costs, may be set aside by the justice, for good cause shown, within fourteen days after it is rendered, on such conditions as he may see fit to impose; but the defendant must have notice of the motion to set aside such judgment and an opportunity to be heard in opposition thereto.

Plaintiff must prove his case.

51. When a defendant does not appear, the plaintiff cannot recover without proving his case.

Proceedings where summons served on only part of defendants.

52. Where the summons is issued against two or more defendants, but not served on all of them, and those not served do not appear to answer to the action, the plaintiff may proceed to judgment as to the defendants on whom the summons was served, or who appear as aforesaid, and either dismiss his action as to the others, or have a second or third summons against them, and from time to time as the process, is served, proceed to judgment against them.

Judgment against defendant in his absence; when and how set aside.

53. When the defendant does not appear and judgment is rendered against him in his absence, the justice may set aside the judgment within fourteen days thereafter, on motion of the defendant and payment of costs. But of such motion, reasonable notice must be given to the plaintiff, his agent or attorney;

and the judgment shall not be set aside, unless the defendant makes oath that he has a lawful defense to the action, or is entitled to some credit, set-off or counter claim, which has not been allowed him, and shows by his own oath, or otherwise, reasonable cause why he did not appear. When the judgment is so set aside, the justice shall set a day for the trial, of which the plaintiff, his agent or attorney, if not present must have at least three days notice. If judgment be entered a second time against the defendant, it shall not again be set aside.

Proceedings thereon.

Second judgment set aside.

54. At any time before judgment, the plaintiff and defendant may, by mutual agreement, have the cause submitted to the arbitrament of three disinterested men, chosen by themselves; and if the arbitrators be present they shall hear and determine the matter in difference between the parties, first being sworn by the justice, impartially to decide the same according to the law and evidence. But if they be not present, a time and place shall be appointed by the justice for the trial, unless the parties agree upon the same, and the justice shall, if necessary, issue a summons to the arbitrators to attend. The fees of arbitrators shall be the same as those of jurors in the county court.

Arbitrators: when and how cases submitted to.

Proceedings if present.

If not present.

Their fees.

55. When the arbitrators attend at the time and place so appointed, being first sworn as aforesaid, they shall hear and determine the cause and make their award in writing, (which shall be valid when signed by any two of them,) and return the same to the justice, who shall enter a note thereof on his docket, and render judgment thereon, and issue execution as in other cases. But continuances may be granted as in other cases.

To hear and determine controversy and make award in writing.

To whom returned.

Duty of Justice.

Continuances granted.

56. Every judgment on such award shall conclude the rights of the parties, unless within fourteen days from the rendition of such judgment, it be made to appear to the satisfaction of the justice, or afterwards

When judgment on award concludes rights of parties

When set aside.

to the court on appeal, that the award was obtained by mistake, fraud, corruption or other undue means. In such case the award and judgment may be set aside by the justice or court, and the cause be tried as if the arbitration had not been agreed upon.

When and how appeals may be taken from judgment or award.

57. No appeal shall be granted from a judgment of a justice rendered on an award as aforesaid unless the party praying such appeal makes oath that he believes such award to have been obtained by mistake, fraud, corruption or other undue means.

When and how justice may set aside agreement and try the case.

58. If after the arbitration has been agreed upon as aforesaid, the award be not returned to the justice within fourteen days, the justice, on the application of either party, the other having reasonable notice, may, in his discretion, set aside the agreement, and thereafter proceed to trial and judgment as in other cases.

Witnesses : justice may subpoena and compel attendance of.

59. A justice may issue subpoenas for witnesses and compel their attendance in any suit pending before him, or in any matter respecting which he may lawfully take depositions.

By whom subpoena served.

60. A subpoena may be served by an officer or any other person.

When return to be sworn to.

When not served by an officer, the affidavit of the person who served it shall be evidence of service.

When and how witness summoned from another county.

61. Whenever either party in an action pending before a justice makes oath that the testimony of a witness residing in any county adjoining that in which the suit is pending is material to him in the trial of the cause, the justice may continue the cause at the costs of such party for a period not exceeding two weeks, and forthwith issue a subpoena for such witness ; which subpoena may be directed to any constable of the county in which the witness resides, and be served by such constable or any other person, as in other cases.

Continuance of cause.

62. A witness in a civil suit is entitled, at the time the subpoena is served, to demand payment of his legal fees for traveling to and from the place of trial, and one day's attendance. If he demand them at such time and they are not paid he is not obliged to attend the trial.

Witness may demand fees in advance.

Not obliged to attend if not paid.

63. A person attending as a witness under a subpoena shall be allowed one dollar for each day's attendance, and five cents for each mile necessarily traveled to the place of attendance, and the same for returning, and also the tolls and ferriages paid by him.

Fees, &c., of witnesses.

64. Any party calling more than two witnesses to any fact which is not contradicted by another witness, shall pay the costs of such additional witnesses, unless otherwise ordered by the justice.

Number of witnesses restricted.

65. No claim for attendance shall be allowed a witness unless made before execution is issued.

Claim for attendance; when to be made.

66. Whenever it shall appear to the satisfaction of a justice that any person has been duly served with a subpoena to give evidence before him in any matter in which he has authority to require such witness to appear and testify; that his evidence is material; and that he fails or refuses to attend as required by such subpoena; such person, on reasonable notice and an opportunity of being heard if he still refuses and fails to testify, in addition to the punishment now authorized by law may be fined by the justice not exceeding five dollars, and shall be adjudged to pay the costs of the proceedings against himself.

Penalty for failure of witness to attend.

67. An entry of such fine and costs, stating the reason therefor, must be made by the justice in his docket, and shall have the effect of a judgment in favor of the state, and may be enforced as other judgments of justices. When a person in attendance

Fine and costs in such cases to be entered by justice in his docket.

Penalty for failure to testify.

refuses to testify, without showing sufficient cause, he shall be subject to the like penalty.

Witness also liable for damages.

68. Every person subpoenaed as aforesaid, and failing and refusing to appear and testify, without sufficient cause, and every person present at the trial and refusing to testify, without such cause, shall also be liable to the party requiring his evidence, for all damages such party may sustain by such failure or refusal.

Depositions of witnesses, when and how taken.

69. Depositions of witnesses residing out of the county, or sick, or otherwise unable to attend, or about to leave the county, may be taken by either party on reasonable notice to the other, to be used in trial before a justice ; and no commissioner shall be necessary.

No commission necessary.

How return sealed &c.

70. Such deposition shall be sent under seal to the justice before whom the case is to be tried, the officer taking the same writing his name across the place where it is sealed. And if the witness, at the time of the trial, be absent from the county, or sick, or otherwise unable to attend, the deposition, if competent and proper evidence, may be read in evidence at the trial by either party. The rules of evidence in trials and proceedings before justices shall, unless otherwise provided, be the same as in the county court.

When to be read.

Rules of evidence.

Judgment ; offers to confess, how made, &c.

71. The defendant may, either before the suit is brought, or at any time afterwards before trial, make an offer in writing to confess judgment in favor of the plaintiff, for the sum or property specified in such offer. Such offer may be served on the plaintiff as a summons, and the proof of such service shall be filed with the justice at or before the trial. If the plaintiff fail to accept the said offer before trial, or to give notice to the defendant of such acceptance, and do not recover a more favorable judgment, the justice, on proof of such offer being made, shall adjudge the plaintiff to pay all costs of the action from the time of the offer. If the offer so made be not accepted, it

When plaintiff adjudged to pay costs.

shall not be given in evidence against the defendant.

72. When the plaintiff dismisses his action, (except When judgment to be rendered immediately. in the case mentioned in the forty-first section,) or judgment is confessed, or the defendant is in custody, or property is held under attachment, judgment shall be entered without delay. In other cases, judgment When in two weeks may be entered at any time within two weeks after the trial; and judgment shall be entered for the aggregate amount of principal and interest so ascertained to be due. Every judgment shall bear interest Judgment to bear interest. from its date, upon such amount.

73. In any case in which it is not otherwise herein provided, the justice who rendered the judgment, or his successor, may, on motion of either party, the other, his agent or attorney, being present or having had reasonable notice of the motion, set aside the judgment within two weeks after it is entered, and grant a new trial on such terms and conditions as he sees fit to impose. But this shall only be done when the justice is satisfied that injustice was done When judgment may be set aside, &c. by the judgment to the party by whom the motion is made. When only such power so be exercised.

74. A judgment may be revived in favor of or against the personal representative of a deceased party within three years after it is rendered, or (unless the three years shall have expired before the death of such party,) within two years after his personal representative shall have qualified, and such revival may be by an order to that effect entered on his docket by the justice who rendered the judgment, or his successor, on the motion of the party in whose favor the judgment was rendered, or his personal representative, the other party, or his personal representative, agent or attorney, being present, or having had reasonable notice of such motion. When judgment may be revived, &c.

75. Judgments of justices may be docketed in the judgment docket kept in the clerk's office of the county court, in like manner and with like effect, in all respects, as the judgments of said courts. Judgments: where docketed; effect thereof.

Transcript of, may
be filed in clerk's
office,

76. The person in whose favor a judgment is rendered by a justice, or who is entitled to receive the money due thereon, or any part of it, may file in the clerk's office of the county court of the county in which the judgment was rendered, a transcript thereof, certified by the justice who has the lawful custody of the docket in which such judgment is entered; and the said clerk may issue executions thereon in the same manner and with like effect as if the judgment had been rendered by the said court.

Clerk may issue
execution thereon,

Entered in execu-
tion docket.

How indexed and
filed.

Fee of clerk.

The transcripts filed as aforesaid shall be entered by the clerk in his execution docket and indexed in the name of both plaintiff and defendant, and be filed in separate bundles for each year; for which service the clerk shall be entitled to a fee of fifty cents, to be paid by the person at whose instance the same is rendered.

Justices and con-
stables not to pur-
chase judgment
rendered by justice.

77. No justice or constable shall purchase any judgment rendered in his county by a justice thereof. Every person violating this provision shall, for every such offense, be fined not less than ten nor more than one hundred dollars.

Penalty.

Suggestions on
judgments; pro-
ceedings by to col-
lect judgment, &c.

78. On a suggestion by a judgment creditor to the justice who rendered the judgment, or his successor, that any person, whether in the same or another county, has effects of the judgment debtor in his possession or control, not exempt by law from execution, or is liable to the debtor in any sum of money, whether then due and payable or thereafter to become so, the justice shall order such person to appear before him, at a time and place specified in such order, and answer under oath respecting such effects and liability, and may also subpoena witnesses to testify concerning the same.

Order how signed
and returned.

79. The order shall be signed by the justice, and served and returned like a summons, but the exact time of the service shall be stated in the return

And the person against whom it is issued, from the time of the service thereof, shall be liable to the judgment creditor for whatever effects, (real estate excluded,) of the judgment debtor, not exempt by law from execution, were in his possession or control when the order was served, and whatever amount he was then liable for to the judgment debtor, whether then due and payable or thereafter to become so, but so far only as may be necessary to satisfy the judgment, including the costs of the proceedings upon the suggestion: Provided, such effects shall not be liable to the judgment creditor, if the judgment debtor shall show to the satisfaction of the justice that he is a husband or parent, and is a resident of the state, and that his personal estate, including such effects, does not exceed two hundred dollars.

Person on whom served liable to judgment creditor, &c.

But not so liable in certain cases.

80. If the person against whom such order is issued appear and answer, he shall be examined under oath touching the money and effects for which he is liable as aforesaid, and the justice shall hear any proper evidence respecting the same. If he fail to appear, and it be shown that the order was served ten days at least before the time of appearance specified therein, the justice may hear proof respecting the money and effects for which such person is liable as aforesaid: or on motion of the judgment creditor, may appoint another time, and cause not less than ten days' notice to be given to the person so liable, that unless he appear and answer at the time so appointed, it will be taken as an admission that he has in his hands sufficient money of the judgment debtor to satisfy the judgment, including the costs of the proceedings on the suggestion.

Examination of person against whom order is made.

Proceedings if he fail to appear.

If he fail to appear at the time so last appointed, and it be shown that the notice was served not less than ten days before that time, or if at any time he appear and refuse to answer any proper question,

When judgment to be given against him by default.

When party may answer in writing under oath.

When examined on interrogatories.

Effect of failure to answer within two weeks.

and in either case no good cause be shown for such failure or refusal, the justice may proceed as if he had admitted sufficient money to be in his hands: Provided, That if the person so liable reside in another county, he may answer in writing under oath, and such answer, if sufficient, shall be equivalent to his personal appearance and examination; or if insufficient he shall be examined on interrogatories in writing, approved and allowed by the justice; and his failure to file with the justice his answer under oath to such interrogatories within two weeks after he has been served with a copy thereof, shall, unless good cause therefor be shown, be taken as an admission that he has in his hands sufficient money of the judgment debtor to satisfy the judgment, including the costs of the proceedings on the suggestions.

What judgment or order to be rendered in case it appear that the party against whom order is made has money or property of, or is indebted to judgment debtor.

81. If it appear by the admission or examination of the person against whom the proceedings on the suggestion are pending, or by other evidence, that he is liable for any money or effects of the judgment debtor, whether sufficient to satisfy the judgment or not, the justice shall order such person, if it be a sum of money, to pay the same to the judgment creditor, to be applied first to the costs of the proceedings on the suggestion, and the balance to the discharge of the judgment; but if it be shown that such sum of money is not yet due and payable, the order shall be for the payment thereof at the time, (to be stated in such order,) when it will be due and payable. If such person be liable for effects other than money, the justice shall ascertain the value thereof and order such person to pay the said value or so much as will be sufficient, on a certain day to be specified in the order, to the judgment creditor to be applied as aforesaid, unless such person, on or before that day, deliver the said effects, or a sufficiency thereof, to the officer designated by the justice to receive the same. If effects be so delivered, they sh

be sold as if taken on execution, under an order of sale to be made by the justice, and the proceeds be applied as aforesaid.

Sale of effects delivered.

82. Any order made by the justice pursuant to the preceding section, directing the payment of money by the person against whom the proceedings on the suggestion were instituted, may be enforced by execution against such person in the name of the judgment creditor, when such money is or becomes due and payable; and an appeal shall lie from such order to the county court in like cases and manner as from judgments of justices. The word "person," in this and the four preceding sections shall be construed to include corporations as well as natural persons.

How order, &c. in such cases enforced.

Appeals in such cases.

Word "person" includes corporations.

83. The party against whom a judgment is rendered by a justice may, within ten days thereafter, obtain stay of execution thereon, by filing with the justice a bond; signed by one or more sufficient parties to the effect that the amount of such judgment, including interest and costs, will be paid at the expiration of the stay. The justice shall note the bond in his docket, stating the names of the parties signing the same, and the time of stay allowed. Upon such bond being filed within ten days, if execution has been previously issued, it shall be recalled by the justice.

Stay of execution; How obtained and when.

84. If the judgment, with interest and costs, be not paid when the stay expires, the bond shall have the effect of a judgment, and execution shall issue jointly against the judgment debtor and the parties who signed the bond. It shall be the duty of the justice to issue such execution within three days after the stay expires, unless otherwise ordered by the party who is entitled to receive the money to be collected thereon.

When bond to have effect of judgment.

Execution, when to issue.

85. When the judgment exclusive of interest and costs does not exceed ten dollars, such stay shall be

For what time stay allowed.

for one month ; if over ten and not over twenty dollars. for two months ; if over twenty and not over fifty dollars, for three months ; and if over fifty dollars for four months.

Not allowed in certain cases.

86. No stay of execution shall be allowed in the following cases :

First, On any judgment upon a bond filed to obtain such stay ;

Second, On the judgment rendered on any other bond filed with a justice or given to a constable, pursuant to this act ;

Third, On any judgment against a constable for refusing or neglecting to pay as the law requires, money collected or received by such constable in his official capacity ; or for failing to make return, or making a false return of any process or order.

If surety pay debt, judgment remains in force for his use.

87. If any surety who signed the bond given to obtain stay of execution, pay the judgment before or after the stay expires, the judgment against the principal shall remain in force for his use ; and executions thereon may be issued by the justice ; on the application of such surety, after the expiration of the stay, with an endorsement on such execution showing for whom it is to be collected.

When execution to issue.

Endorsement thereon.

When and how additional security required.

88. If the justice, at any time before the stay expires, become satisfied that the security taken on granting such stay is insufficient, he shall give notice to the judgment debtor, requiring additional security ; and if it be not given within three days after service of the notice, he shall make entry of the fact on his docket ; and forthwith issue execution on the judgment. But if additional security, to the satisfaction of the justice, be given within two weeks after the service of the notice, the execution, if issued in the meantime, shall be recalled, and the stay originally granted remain in force.

If not given execution to issue.

When it may be recalled.

89. Subject to the provisions of law, in relation to Execution: when to be issued. cases in which stay of execution is granted, or the judgment is removed on appeal to the court, executions for the enforcement of the judgment of a justice may be issued by the justice by whom such judgment was rendered, or his successor in office, or the justice with whom the docket on which such judgment is entered is lawfully deposited, at any time within three years from the entry of the judgment or the date of the last execution issued thereon, or if the judgment be revived, from the date of such revival. ✓

90. If any stay of execution be not granted within Duty of justice to: issue execution after ten days from date of judgment. ten days after the judgment is rendered, or the cause be not removed on appeal to the county court within that time, it shall be the duty of the justice, on the expiration of the said ten days, to issue execution, unless otherwise directed by the person entitled to receive the money to be collected thereon; and on the application of such person, the justice, in his discretion, may issue execution before the ten May issue sooner. days expire.

91. The execution must be filled up before it is delivered to be executed; otherwise it will be void. It must describe the payment on which it is issued, by stating the party in whose favor, and the party Execution void if not filled up. against whom, the justice by whom, and the county in which such judgment was rendered. What must be stated in.

It must also state the principal sum to be collected, the time the interest commenced, the amount of costs to be collected, and the credits, if any, to which it is subject by reason of payment made since the judgment was rendered. It shall be returnable sixty When returnable. days from its date, be signed by the justice, and command the officer to whom it is directed to collect the amount due out of the personal property of the judgment debtor, and return the execution with a certificate thereon showing how it has been executed. If there be an defect, error, or omission, in any execu-

tion, or any other order issued by a justice for the sale of property, they shall not vitiate anything done under it which would have been proper if the execution or order had been correctly issued, but the justice may at any time amend the same according to the truth. ˆ

Acts of officers under not vitiated by defects in.

How execution for sale directed and executed.

92. The execution or order for sale shall be directed and executed as provided in the sixth section. When, for any cause, it is unfit for an execution or order for sale to be directed to a constable, it may be directed to the sheriff, deputy sheriff, or sergeant of a town; and the sergeant of a town to whom any execution or order for sale is issued by a justice is directed, may, like the others, execute the same within the county or on any creek or river adjoining the same.

When new execution may issue.

93. If an execution be returned unsatisfied, or no return be made thereof, new executions may successively be issued after the return day of the former, to be endorsed respectively, "second execution," "third execution," and so forth, as the case may be.

Duty of justice when judgment rendered against principal and surety.

94. When a joint judgment is rendered against a principal debtor and his surety, if such suretyship appear to the satisfaction of the justice by any evidence at the trial, or paper filed in the cause, or by admission of the parties, he shall note the fact on his docket, and in such case a memorandum thereof shall be endorsed on the execution, and the personal property of the principal debtor subject to execution, within the jurisdiction of the officer, shall be first sold, unless the surety direct otherwise.

Officer must endorse execution when received.

95. The officer to whom an execution issued by a justice is delivered to be executed, shall endorse thereon the day and hour when it came to his hands. If he fail to do so, the creditor may recover against him and his sureties, or any one or more of them, and the personal representatives of such of them as are dead, before the justice by whom the execution

Penalty for failure.

was issued, or his successor, a sum not exceeding fifteen per cent, on the whole amount, including interest and costs, due on the execution. From the time the execution came to the hands of such officer to be executed, it shall operate as a lien on the personal property of the judgment debtor liable to be seized under it; which lien, however, shall be subject to any prior lien acquired on such property, by the issue or levy thereon of any other process. When there are several executions in the hands of the same officer against the same judgment debtor, they shall be executed in the order in which they were received; or if received together, all shall share alike, without preference to one over another.

Lien of execution.

How executed.

When to share ratably.

96. The officer, after taking into his custody the personal property levied on by virtue of the execution, shall endorse on the execution the time of the levy, and endorse thereon or annex thereto a list of the property. He shall then immediately post notice at three public places in the district, in which such property or the greater part in value thereof was found, (and if any mules, work-oxen, or horses are to be sold, on the front-door of the court-house of the county), of the time and place at which it will be sold. Such notice shall describe the property, or there shall be a list thereof annexed to the same, and the notice shall be posted ten days at least, (or if any mules, work-oxen, or horses, are to be sold, twenty days at least), before the time of sale. But when property levied on is of a perishable nature, or expensive to keep, the justice may order sale to be made thereof, as the case may require. The execution may be levied as well on bank notes, as on other goods and chattels. If the levy be on lawful money, the same shall be accounted for at its par value, as so much money made under the execution. If it be upon notes, and the creditors will not take them at their nominal value, they shall be sold and accounted for as any other property taken under execution.

Time of levy to be endorsed on execution.

Notice of sale.

Contents of.

When justice may order sale.

On what execution may be levied.

If on money, how accounted for.

If on notes, how accounted for.

Sales, how and where.

Hours

Sale to be to highest bidder for cash.

Adjournment of sale.

Power to resell, &c.

Remedy against purchaser at first sale.

Officer not to buy.

Penalty.

Officer's return of sale; what to state, &c.

97. All sales on execution by virtue of this act, except as hereinafter provided, shall be at public auction in the district in which the property, or the greater part thereof in value was levied on, between the hours of ten in the forenoon and four in the afternoon of the day appointed for the sale, and at the house or on the premises where the property was taken, or at one of the most public places in the district. Mules, work-oxen and horses shall be sold at the court-house of the county, on a court day, between the hours herein stated. At the time and place appointed for the sale, the officer or person shall sell to the highest bidder, for cash, the property, (except lawful money and such bank notes as the creditor will take at their nominal value) or so much as may be necessary; but if there be no time to complete the sale on the day appointed, it may be adjourned from day to day until completed.

98. If at any such sale a purchaser does not comply with the terms thereof, the officer may re-sell the property, either forthwith or upon such notice as he deems proper, or return that the property was not sold for want of bidders. If, on the re-sale, the property be sold for less than it sold before, the first purchaser shall be liable for the difference to the creditor, so far as it is necessary to satisfy him, and to the debtor for the balance.

99. The officer holding the execution, or any order for sale, shall not purchase, directly or indirectly, any property sold on such execution or order. If he do so, he shall be fined not less than five nor more than one hundred dollars.

100. The officer to whom an execution or order for sale is delivered, to be executed, shall make true return thereon, at the proper time and place, stating in such return the time and manner of executing the writ or order, or why it has not been executed, and

shall subscribe his name to such return. He shall ^{To whom to pay money.} pay the money made, except his own fees and costs, to the party entitled thereto, his agent or attorney. When any property is sold under the execution or order, he shall return with the writ or order, a true account of such sale, specifying the several articles ^{Account of sale to be returned.} sold, and the price thereof. If there be any property remaining in his hands unsold, subject to the execution or order, he shall annex to his return a true list ^{List of property unsold.} of such property, specifying the several articles. If he fail herein, he shall be fined not exceeding ten dollars; and moreover, he and his sureties, or any one or more of them, and the personal representatives of such as are dead, shall be liable for such failure to the person entitled to receive the money mentioned in the execution or order. A judgment for such fine shall not be a bar to further proceedings, if the failure be continued; but there shall be a further fine, from time to time, of not exceeding ten dollars for every month subsequent to such judgment that the failure shall continue, until it appear that the return cannot be made, or that the amount due upon the execution or order has been paid to the creditor: Provided, That not more than ten dollars ^{Judgment for fines, no bar to further fines.} fine shall be recorded in any one prosecution. ^{Not to exceed ten dollars in any one prosecution.}

101. If an officer make such return upon an execution or order of sale issued by a justice as entitles any person to recover money from such officer, and fail to pay the same as he ought, the justice having jurisdiction may, on motion or action on behalf of such person, give judgment against such officer and his sureties, or any one or more of them, or the personal representatives of such of them as are dead, for so much principal and interest as is due at the time the judgment is rendered, with interest thereon at the rate of not less than six nor more than fifteen per centum per annum, as the justice may deem proper from that time until payment. ^{Remedy against officer for failure to pay over money, &c}

Copies of entry in justice's docket, evidence against officer.

102. A copy from the entry in the justice's docket, of the date of any execution or order of sale issued by him, and to whom delivered, shall be evidence in any proceeding against the officer to whom it is entered as delivered, for failure to make due return thereof, or failing to pay over money received thereon. If a justice, upon being applied to for a copy of an entry, refuse it, or upon being summoned to produce the docket in which such entry is or ought to have been made, fail to produce such entry he shall forfeit twenty dollars to the person making such application, or on whose behalf he is summoned.

Penalty on justice for refusing to give copy, &c.

Officers and sureties liable for money collected after return day of execution.

103. If an officer collect money mentioned in an execution, or order of sale issued by a justice, after the return day thereof, he and his sureties shall be liable for the money so collected in like manner as if the collection had been made before the return day. And if a constable receive money on account of any claim entrusted to him to sue upon or collect, he and his sureties shall be liable for the money so received, as for money collected under execution; and after six months from the date of any receipt for such claim, signed in his official character, such receipt shall be prima facie evidence of the receipt of the money.

Liability for money received on claims.

Effect of receipt as evidence.

Duty of justice where property remains in hands of officer unsold.

104. When an execution or order for sale is returned unsatisfied in whole or in part, and there is property in the hands of the officer remaining unsold for the want of bidders, or other cause, it shall be the duty of the justice, unless otherwise directed by the person entitled to receive the money remaining uncollected, forthwith to issue his order commanding such officer to sell the said property and pay over the proceeds thereof to the creditor, his agent or attorney; which sale shall be subject to the same regulations as sale on execution.

Security that property will be forthcoming.

105. Any officer having levied on property, of which he permits the party against whom the execu-

tion or order of sale issued, or any other person, to retain or have possession, may take such security for his own indemnity, as he shall require, that such property shall be delivered at the time and place appointed for the sale thereof.

106. When an officer, by virtue of an execution, order of sale, or order of attachment, has levied on or attached, or is about to sell, property claimed by any person other than the party against whom the execution or order is issued, if such claimant or another for him, with one or more sufficient securities, sign and file with the justice by whom the execution or order was issued, a bond to the effect that such claimant, in any suit that may be brought on such bond, within three months after the date thereof, will prove that he was the owner of the said property at the time of such seizure, or if he fail to do so, will pay the value thereof, the justice shall issue his order, directed to the officer having such execution, order of sale, or attachment, commanding him to deliver up the property to the said claimant; and such officer shall obey the same. The money, if any, which may be recovered on such bond, shall be applied as the proceeds of such property would have been if it had not been released as aforesaid.

When property levied on is claimed by another.

Security given by claimant.

Money recovered how applied.

107. Or the claimant, in such case, without giving the bond mentioned in the preceding section, may apply to any justice of the county in which the levy or attachment was made, for an order to notify both the creditor and debtor to appear and show cause why the property should not be discharged from the levy, order of sale, or attachment. Such order shall be returnable in five days or less from the date thereof, and be served and returned according to the command thereof; and if it be returned served, the justice, on the return day thereof, or at such reasonable time thereafter as he may appoint for the purpose, shall hear the parties, or such of them as attend, and dis

Trial of claimant's right.

Justice to stay
sale until right of
property determin-
ed.

miss the claim, or order the officer to deliver the property to the claimant, as the right shall appear; and the party prevailing shall recover his costs. The justice may also make any order necessary to prevent the property from being sold before the right thereto is determined as aforesaid.

Appeal in such
cases.

108. Any party considering himself aggrieved by the decision of the justice under the preceding section, may appeal therefrom to the county court, in like manner as from a judgment.

Commitment of
defendant previ-
ously arrested.

109. When judgment is rendered against a defendant, who is in custody under an order of arrest issued pursuant to the twenty-seventh section, the justice, if upon the whole evidence produced, he believe the defendant to have been guilty of fraud in any of the particulars mentioned in that section, may issue an order to the officer having him in custody, to deliver him to the jailor of the county, to be confined in jail until lawfully discharged, which order shall be executed according to the command thereof. With such order, an execution may also issue.

Execution may
issue with order.

Arrest and com-
mitment of defen-
dant after judg-
ment.

Proceedings there-
on.

110. If at any time after a judgment rendered by a justice, there is filed with such justice, or his successor, the affidavit or affidavits of one or more creditable persons, stating the amount yet remaining unpaid on the said judgment, and showing to the satisfaction of the justice that the person against whom such judgment was rendered, has, since the date thereof, been guilty of fraud in any of the particulars mentioned in the twenty-seventh section, the justice may thereupon issue an order for the arrest of such person, and to bring him before said justice for examination as to such alleged fraud. If, after hearing all the evidence adduced by the parties upon such examination, the justice be satisfied that the judgment debtor has been guilty of fraud, in any of the particulars so alleged against him, he may order him to be imprisoned, as provided in the preceding section.

111. An execution may be issued with the order mentioned in the last section, or the order may be issued while an execution is outstanding; and if sufficient property be found to satisfy the execution, the order shall not be executed, or, if executed, the person so in custody shall be discharged. The order shall be dated the day it is issued, be signed by the justice, directed like the summons, but shall not be executed out of the county where the judgment was rendered; and if an execution be issued with it, or be outstanding, both shall be directed to the same officer for execution. It shall state the parties to the judgment, the debt, interest and costs, and the credits to which the judgment is subject, as required in an execution; and command the officer to arrest the party against whom the judgment was rendered, and deliver him to the jailor of the county, to be confined in jail until lawfully discharged. It shall be returnable whenever executed, or if not previously executed in sixty days from its date; and shall be executed according to the command thereof.

Execution may be issued with order, or order may be issued, through execution outstanding,

When order of arrest not to be executed,

Requisites of order,

When returned.

How executed.

112. But the order mentioned in the one hundred and tenth section shall not be issued until a bond signed by one or more sufficient parties, is filed with the justice, to pay the person to be arrested all damages he may sustain by such arrest and imprisonment, if it should thereafter appear that the order was issued without sufficient cause therefor.

Bond to be filed by plaintiff.

113. A copy of the order, either in the cases mentioned in the one hundred and ninth or or one hundred and tenth sections, signed by the justice, or the officer having the prisoner in custody, shall be sufficient to require the jailor to receive and keep such prisoner in jail until discharged according to law.

Copy of order sufficient authority to jailor to imprison party.

114. The prisoner committed as aforesaid shall be kept in jail for ten days, and one day in addition for every five dollars over twenty due on the said judgment at the commencement of his imprisonment, including

Term of imprisonment.

interest and costs ; and at the expiration of the said time, shall be discharged by the jailor without further order.

When and how discharged by justice.

115. He shall be discharged by order of the justice at any time, upon his paying to the officer holding the process against him, the whole amount due on the judgment, together with the costs of his arrest and imprisonment; or surrendering property sufficient to satisfy the same, to such officer; or with one or more sufficient sureties, signing and causing to be filed with the justice, a bond to pay the judgment and costs aforesaid within sixty days. If property be so surrendered, it shall be sold and applied as if levied on under an execution.

Sale of property surrendered.

Jailor may discharge prisoner, after notice, if fees, &c., not paid.

116. The party at whose instance any person is committed as aforesaid, shall be liable to the jailor for his fees and the support of the prisoner, and the jailor may at any time, after notice to such party, discharge the prisoner, if such fees and support be not paid.

In what cases appeals lie from judgment of justice.

117. In all cases an appeal shall lie, under the regulations herein prescribed, from the judgment of a justice to the county court of the county, when the amount in controversy, exclusive of interest and costs, exceeds ten dollars, or the case involves the title, right of possession or boundaries of land, the freedom of a person, the validity of a law, or an ordinance of corporation, or the right of a corporation to levy tolls or taxes.

When and how granted.

118. The appeal shall not be granted by the justice unless within ten days after the judgment is rendered or revived, a bond signed by one or more sufficient parties is filed with him, to the effect that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him on such appeal.

119. But, if the appeal be applied for on behalf of

a town, village, county, or board of education in their corporate capacity, it shall be granted without such bond.

120. When there are two or more plaintiffs or defendants, any one or more of them may appeal, without joining therein the others on the same side.

When bond dispensed with

One of several plaintiffs or defendants may appeal, &c.

121. After the appeal is granted all further proceeding on the judgment of the justice shall cease. If any execution, order of arrest, or other process or order, be outstanding, it shall be recalled by the justice, and if the appellant be in custody he shall be discharged.

Appeal granted : effect of.

122. The justice shall, within twenty days from the day on which the appeal is perfected, make out and certify a complete transcript from his docket, of all the proceedings before him in the action, and deliver or transmit the same, together with all the papers in the cause, to the clerk of the county court of the county. If the justice fail to do so, he shall be fined not more than one hundred dollars.

Transcript and papers to be delivered to clerk : when

123. The clerk of the county court, on receiving the said transcript and papers, shall file the same and docket the appeal. The appeal shall be tried, at any term of such court, held for the trial of causes, in a summary way, without pleadings in writing. But, whenever it shall appear to the court that it is necessary to effect the ends of justice, the plaintiff may be required to file a full statement of his demand, and the defendant may be required to file a full statement of his defense. If the sum in controversy exceeds twenty dollars, and either party so require, a jury of six shall be selected and impaneled to try the cause, in like manner as other juries are selected and impaneled in said court. All lawful evidence produced in relation to the matter in difference between the parties shall be heard, whether such evidence was produced before the justice or not, and the cause shall be determined without reference to the judg-

Penalty for failure.

Clerk to file papers and docket appeal.

When and how appeal tried.

Full statements of demand and of defense ; when filed.

Trial by jury, when

What evidence heard.

How cause to be determined.

Proviso as to trial
appeal.

ment of the justice on the principles of law and equity: Provided, No appeal shall be tried as aforesaid, on motion of the appellant within less than three months from the time the transcript and papers are filed with the clerk of the county court, unless the appellee, his agent or attorney, be present at the time of application for the appeal, or ten days' notice in writing of the trial has been given to the appellee, his agent or attorney.

New bond; when
required.

124. If the court, in any case, be of the opinion that the bond filed is insufficient or the security doubtful, it shall order a new bond, in proper form and with good security, to be given within a time specified in such order, and if it be not given, or good cause shown why it was not, the same judgment which was rendered by the justice, with the costs of the appeal, shall be entered in the county court without further trial against the appellant and those who signed the bond.

Judgment of justice
affirmed if not
given.

When appellant to
pay costs.

Excepted cases.

Awarded as court
deems right.

Proviso.

125. If upon the trial of an appeal from a justice the appellant do not recover five dollars in excess of the former judgment appealed from, or reduce it five dollars if it was against him, exclusive of interest and costs, the appellant and those who signed the bond shall pay the costs of the appeal, except in cases involving the title to specific personal property, or the possession of real estate, the freedom of a person, the validity of a law or an ordinance of any corporation, or of the right of any corporation to levy tolls or taxes. In such cases, costs shall be awarded as the court deems right: Provided, That the appellant shall in no case recover costs where the original judgment against him is reduced more than five dollars, unless, before such appeal is tried, he shall have tendered the appellee an amount equal to and greater than the judgment recovered by him on the trial of

such appeal¹. together with all costs that may have accrued up to the time of such tender.

126. When the judgment appealed from is against the appellant for any sum of money, and an equal or greater sum is found due by the appellant, judgment shall be rendered by the county court against the appellant and those who signed the bonds, for the sum due, including interest and costs up to time the appeal was taken, with damages on the aggregate at the rate of six per cent. per annum, from that time until payment, and the costs of the appeal.

In what cases judgment to be rendered against appellant for sum due, with interest, costs and damages.

127. In all cases of appeal from a justice to a county court, the court (subject to the foregoing rules, when they are applicable), shall make any order during the progress of the cause, which the principles of law or equity may require, and shall render judgment as the right shall appear, and proceed to enforce the same as other judgments of the court are enforced, without remanding the cause again to the justice. The judgment, if in favor of the appellee, shall be against the appellant, and those who signed the bond. Upon the trial of the appeal, the amount due (if any) from one party to the other shall be ascertained, and judgment rendered therefor, in the manner required by the seventy-second section.

Orders made by court pending appeal.

Judgment if in favor of appellee, &c.

128. Appeals from the judgments of justices may be granted, after the expiration of ten days, by the county court in term time, or the president thereof in vacation, when the party seeking the appeal (except as provided in the one hundred and nineteenth section), shall deliver to the court or president a proper bond, with sufficient security thereto, as hereinbefore prescribed, and show by his own oath, or otherwise, good cause for his not having taken such appeal within the said ten days.

Appeals from judgments of justices.

and in such cases.

129. In such case, if the appeal be granted, the

Order of court, &c.
granting appeal,

court or president shall make and certify to the justice an order directing him to cease all further proceedings in the cause, and recall all executions and orders that may be outstanding for the enforcement of the judgment, and transmit without unavoidable delay, to the clerk of the said court, a complete transcript from his docket of the proceedings in the action, together with all the original papers relating thereto. Upon the receipt of such transcript and papers by the clerk, the cause shall be proceeded with as in other cases of appeals from the judgments of justices.

Duty of justice
receiving same.

pro-
ceed.

Docket kept by
justice.

130. Every justice shall keep a book denominated a "docket," to be furnished at the expense of the county, and used exclusively for entering therein his judicial proceedings.

How cases num-
bered therein, &c.

131. He shall number the cases progressively on the docket, and number the papers of each case to correspond. He shall keep all the papers of each case together in one package, and file them in the order they are numbered.

How cases entered
in docket.

132. He shall enter in his docket the title of every action commenced before him, setting forth the names of the parties, if known, and showing which are plaintiffs and which are defendants, and stating the time the action was commenced, and the amount of money or damages, or the specific property, which the plaintiff demands.

What particulars to
be entered under-
neath title of action

133. Underneath the title of the action he shall enter at the times they occur, the following particulars, commencing the proceedings of every day with proper date :

The date of the summons, the time it is returnable and the name of the person to whom it was delivered to be served. The same particulars must be stated in relation to any order of arrest or attachment which may be issued in the action ; and if an

order of arrest or attachment be issued, it shall be stated on whose affidavit it was founded.

The return made on the process shall be briefly noted.

The name of the agent, attorney or guardian, if any appointed on behalf of any party, shall be stated.

The filing by either party of his complaint or answer, if made orally, with a brief notice of the contents thereof.

Every continuance, showing at whose instance it is made, and to what time and whose costs. If made to a different place, it shall be so stated.

The bonds filed in the action by either party shall be noted with the names of the parties who signed the same.

The docket shall show which of the parties is present at the trial.

The judgment of the justice shall be stated, with the items of the costs included therein.

The execution and orders to sell issued, to whom delivered to be executed, and returns made on any such process, should be shown by the entries on the docket; also,

If any appeal be taken, by which party, the bond filed by him, by whom signed and when filed, and the notice of appeal, when filed.

The bond filed for stay of execution, by whom signed and when filed, and the stay granted.

The satisfaction of the judgment, and how and when satisfied.

134. Every justice shall keep an alphabetical index to all judgments entered in his docket. In such index shall be entered the names of the parties to each judgment, with a reference to the page where the judgment is entered. ^{Index to judgment.}

Effect of docket or transcript as evidence.

135. Whenever it is necessary to prove a judgment or other proceeding had before a justice, or any process issued by him, or the return thereof, or any order made by him in a suit, the docket in which it is entered, or a transcript thereof, certified by him or his successor in office or the person lawfully having the custody of such docket, shall be evidence of the same, but shall not be conclusive, if errors or omissions be shown.

Docket and papers to be delivered to successor.

136. Every justice, upon the expiration of his term of office, shall deposit with his successor his official docket, as well as those of his predecessors which may be in his custody, together with all papers relating to his judicial proceedings, in their proper files and order, and all statutes, books and papers received by him in his official capacity, to be kept by such successor as public records and property.

Custody of docket &c., in case of vacancy.

137. If the office of a justice become vacant by death, removal from the district, or otherwise, the dockets, papers, statutes and books in the possession of such justice, by virtue of his office, shall be delivered to the other justice, if there be one, of the district, to remain in his custody until such vacancy is filled, and then to be delivered to the person elected or appointed and qualified to fill such vacancy.

Authority of justice with whom docket is deposited.

138. A justice with whom the docket and papers of another are lawfully deposited, during vacancy or absence, or as the successor of such other justice is hereby authorized, while such docket and papers remain lawfully in his custody, to issue execution or other process in the suits entered thereon, give and certify transcripts thereof, and do all such other acts in relation thereto as he may do in relation to his own docket and papers. But executions and process so issued shall be returned to the justice who may have the legal custody of said docket, on the return day thereof.

To whom execution to be returned.

139. If the plaintiff, at the commencement of his action, or at any time during its pendency, and before judgment, show to the satisfaction of the justice by his own affidavit, or the affidavit or affidavits of one or more credible persons, made before any person authorized to administer oaths, the nature of his claim, that it is just, the amount thereof as near as may be, and that the defendant, or any of the defendants to the action, has committed or is about to commit frauds in one or more of the particulars:

Order of attachment; when, how and upon what affidavit and for what causes issued.

First. That the defendant or one of the defendants is a foreign corporation, or is a non-resident of this State; or,

Second. Has left or is about to leave the State; or,

Third. So conceals himself that a summons cannot be served upon him; or,

Fourth. Is removing, or is about to remove his property, or a part thereof, out of this State; or,

Fifth. Is converting or is about to convert his property, or a part thereof, into money or securities, with intent to defraud his creditors; or,

Sixth. Has assigned or disposed of his property, or a part thereof, or is about to do so, with intent to defraud his creditors; or,

Seventh. Has property or rights in action which he conceals; or,

Eighth. Fraudulently contracted the debt or incurred the liability on which the action or suit is brought.

Such justice, having jurisdiction of the action, may, subject to the provisions contained in the following section, issue an order of attachment against the personal property and the claims of such defendant, to be directed and executed as prescribed in the sixth section, and returnable when executed, but, if not previously executed, in sixty days from its date.

When returnable.

140. But such order shall not be issued until a bond signed by one or more sufficient parties, is filed with the justice, to the effect that the plaintiff will pay to such defendant all damages he may sustain by reason of the attachment, should it thereafter appear that it was issued upon false suggestions or without sufficient cause.

141. The order may be issued whether the action be founded on contract or brought to recover damages for a wrong; and except where the ground of attachment is, that the defendant is a foreign corporation or a non-resident of the state, it may be issued though the plaintiff's demand be not yet due and payable.

142. The order shall command the officer who is to execute it, to attach the personal property and claims of the defendant against whom it is issued. found within the county where the order is to be executed and not exempt by law from execution or other process, or so much of the said property and claims as will satisfy the plaintiff's demand, with interest and costs, which demand shall be stated in the order in substance as it is in the affidavit, so far as may be necessary to enable the officer to ascertain the amount thereof.

143. The officer who is to execute the order of attachment shall, within his county, deliver a copy thereof to any person designated by the plaintiff, or whom the officer believes to have in his possession or control any personal property of the defendant, or to be liable to the said defendant for any sum of money; and such delivery shall be a sufficient levy of the attachment in respect to the person to whom such copy is delivered. The officer shall note upon the order of the attachment, and state in his return, the exact time of every such levy; and if he fail to do so, shall, with his sureties, and his and their personal representatives, be liable to the same penalty

as for failing to endorse on an execution the day and hour it comes to his hand to be executed. The person to whom a copy of the order of attachment is so delivered, and who is hereinafter called garnishee, shall be liable to the plaintiff for whatever personal property of the defendant, not exempt by law from execution or other process, was in his possession or control when the levy was made, and whatever amount he was then liable for to the said defendant, whether then due and payable or thereafter to become so, so far as may be necessary to satisfy any judgment the plaintiff may recover against such defendant, not exceeding the sum mentioned in the order of attachment, with interest and costs, including the costs of the attachment proceedings.

Lien of the attachment

144. The garnishee may, at any time before judgment against himself, deliver the property or money for which he is so liable, or a sufficiency thereof, to the officer, before the return of the order of attachment, and shall thereby be discharged from liability.

Garnishee may deliver property or money and be discharged from liability.

145. The officer, if the plaintiff in writing require him so to do, shall take into his custody and care any property found subject to the attachment, or a sufficiency thereof, and hold the same subject to the order of the justice, unless a bond signed by two or more sufficient parties, be delivered to him, to the effect that the said property, or its value in money, will be forthcoming to answer any judgment in the action against the defendant. If such bond be offered, the officer shall cause an appraisement of the said property, to be made and signed by two disinterested householders of the neighborhood, sworn for the purpose, unless the value be agreed upon between the plaintiff and the person theretofore in possession or control of the said property. Such land, with the agreement or appraisement, shall be returned to the justice, with the order of attachment.

Officer to take and hold property.

When owner to remain in possession of property.

Appraisement.

Return of attachment with bond. &c

Sale of perishable property.

146. When any property delivered to the officer or taken into his custody as aforesaid, is of a perishable nature or expensive to keep, the justice may order sale to be made thereof, as the case shall require. The officer shall be allowed by the justice the reasonable expenses of executing the attachment and keeping and selling any property under the same; which expenses shall be paid by the plaintiff and taxed in the costs. The ninety-ninth, one hundredth and one hundred and first sections of this act shall apply to orders of attachment as well as executions.

Expenses; how paid.

Certain sections applicable to attachment as well as executions.

When plaintiff may proceed to trial.

147 When the summons in the action has been served on the defendant against whom an order of attachment is issued, or such defendant appears to answer the action, the plaintiff may proceed to trial and judgment against him as in other actions before justices. But if the summons be not served on the said defendant, and he do not appear to answer the action, a second summons shall be issued against him, returnable in not less than one nor more than two months after its date, stating that property or claims of the said defendant have been attached to answer the plaintiff's demand; and the officer to whom such second summons is delivered to be served, shall forthwith cause copies thereof to be posted at the front door of the court house and two other public places in the county where the action is pending, and shall serve the same on the said defendant, if he be found in the county, on or before the return day thereof. If such second summons be returned served upon the said defendant, or he appear to answer the plaintiff's action, or it be returned that the said defendant could not be found in the county, and that copies were posted as aforesaid, the plaintiff may proceed to trial and judgment against such defendant. If judgment be rendered in favor of such defendant, the plaintiff shall be liable for the costs

Second summons, when to issue.

What to state and when returnable.

Where posted.

On whom served.

When plaintiff may proceed to trial on second summons

of the order of attachment and proceedings under Costs.
the same, as well as of the principal suit.

148. A judgment rendered by a justice where the Effect of judgment where summons not served on defendant, &c.
summons has not been served on the defendant, and he has not appeared to answer the action, shall have the effect of a judgment only as to the property and claims of such defendant attached in the action. An execution issued on such judgment may be levied on the property subject to the attachment, but not on How execution levied.
any other.

149. After the plaintiff has obtained judgment, Sale of property attached; when and how.
he may proceed by execution as aforesaid, or the justice, on his application, shall issue an order commanding the officer having in his custody any property subject to the attachment, or any officer to whom an execution might be directed by the said justice, to sell the property so subject, or so much thereof as will be sufficient. Such sale shall be made, the order of sale returned, and the process accounted for, paid, and applied as if the property had been taken under an execution issued on the said judgment; and the officer and his sureties, his and their personal representatives, shall be liable in respect thereto in the Liability of officer.
same manner and to the same extent. If any property or its value in money be not forthcoming to answer the said judgment, pursuant to the bond mentioned in the one hundred and fifty-fifth section, the plaintiff may bring an action in his own name on the bond against any one or more of the parties Action on bond given by defendant.
who signed the same, and recover therein, besides costs, so much as will be necessary to satisfy the said judgment, not exceeding, however, the value of the property detained. . If the property mentioned in the bond, or any part of it be forthcoming, the same, What recovery had.
or so much of it as will be sufficient, shall be sold under the order of the justice, and applied as aforesaid. If the value in money be paid pursuant to the bond such payment shall be to the constable or officer If property mentioned in bond be forthcoming, how disposed of.

holding the process, and be applied by him to the satisfaction of the said judgment so far as is necessary, and the balance paid to the said defendant on demand.

If value in money be paid how applied

Garnishee may be compelled to appear and answer.

150. On motion of the plaintiff, after he has obtained judgment as aforesaid against the defendant, the justice shall make an order requiring any garnishee, at a time and place specified in such order, to appear and answer under oath respecting the property and money with which he is chargeable; and may also subpoena witnesses to testify concerning the same.

Examination of garnishee.

Proceedings if he fail to appear

151. If the garnishee appear and answer, he shall be examined under oath respecting whatever he is liable for, as provided by the one hundred and forty-third section, and the justice shall also hear any proper evidence concerning the same. If he fail to appear at the time and place specified in the said order, and it be shown that a copy of such order was delivered to him ten days at least before that time, the justice may either proceed to hear proof respecting the property and money with which the garnishee is chargeable, or on motion of the plaintiff, shall appoint another time, and cause not less than ten days' notice to be given to the garnishee, that if he do not appear and answer at the time so last appointed, it will be taken as an admission that he is liable for money sufficient to satisfy the judgment against the defendant, with interest and costs, and the costs of the attachment. If he fail to appear after such second notice, or if at any time he appear and refuse to answer any proper question, and in either case no sufficient cause be shown therefor, the justice may proceed as if the garnishee had admitted sufficient money to be in his hands as aforesaid: Provided, That if the garnishee reside in another county, he may always answer in writing under oath, and

When judgment given against him by defendant.

When garnishee may answer in writing.

such answer, if sufficient, shall be equivalent to his personal appearance and examination; or if insufficient, he may be required, being first served with a copy thereof, to answer under oath proper interrogatories in writing, approved and allowed by the justice, and his failure to file with the justice his answer to such interrogatories within two weeks after he has been served with a copy thereof shall, unless good cause be shown for such failure, be taken as an admission by the garnishee that he has sufficient money in his hands as aforesaid.

Effect thereof.

When examined upon interrogatories.

Effect of failure to file answer, &c.

152. If it appear by the admission or examination of the garnishee, or otherwise, that he is liable for any money or property, whether sufficient to satisfy the judgment or not, the justice, if it be a sum of money, shall order him to pay the same, or so much thereof as will be sufficient, to the plaintiff, to be applied first to the costs of the attachment and the balance to the discharge of the judgment against the defendant; but if it be shown that such sum of money is not yet due and payable, the order shall be for the payment thereof at the time (to be stated in such order) when it will be due and payable. If it be property and not money for which the garnishee is liable, the justice shall ascertain the value thereof, and order the garnishee to pay the said value, or so much thereof as will be sufficient, to the plaintiff, to be applied as aforesaid, on a certain day to be specified in the order, unless the garnishee, on or before such day, deliver the said property, or a sufficiency thereof, to the officer designated by the justice to receive it. If property be so delivered, it shall be sold as if taken on execution, under an order of sale to be made by the justice, and the process applied as aforesaid.

Judgment if garnishee be liable for money or property.

If debt not due.

If liable for property and not money, what proceedings had.

153. Any order made by a justice pursuant to the preceding section, directing the payment of money by a garnishee, may be enforced by execution against

Order for garnishee to pay money; how enforced.

Appeal.

the garnishee in the name of the plaintiff, when such money is or becomes due and payable; and an appeal shall be therefrom to the county court in like cases and manner as from other judgments of justices.

When garnishee allowed costs, &c.

154. If the garnishee fairly disclose whatever he is liable for and comply with and perform the orders of the justice, he shall be allowed his reasonable costs and expenses out of the money or property surrendered; and no prior lien on any money or property shall be impaired by attachment.

Prior lien not impaired by attachment.

In what order attachments to be levied.

155. When there are several orders of attachment in the hands of the same officer against the property and claims of the same person, they shall be levied in the order they were received. When several attachments are levied on the same property or claims, or upon the same garnishee, the justice who issued the attachment which has priority of lien, on the notice of any one or more of the plaintiffs, may determine the priorities of the several attachments, and the process shall be applied accordingly. If any property which has been attached be claimed by any person other than the defendant against whom the order of attachment was issued, proceedings may be had according to the one hundred and sixth and one hundred and seventh sections.

Priority of lien; how decided.

Conflicting claims to property attached; how decided.

Constable to attend trial, &c.

156. The constable shall attend all trials in his district in which he may have served process, and preserve order and enforce the lawful commands of the justice during the same.

His authority in executing orders, &c.

157. In serving and executing the orders and process issued by a justice, the officer may exercise the same authority over persons and property as it would be lawful for a sheriff to exercise under like orders or process from the county court.

158. Every officer who shall neglect or refuse to serve or execute any lawful process or order in his

hands, issued by a justice, when in his power to do so, or shall make a false return thereof, or shall fail to return the same on the return day thereof, or shall fail to perform any duty which he is required by law to perform in relation thereto, shall, if there be no other fine or punishment imposed therefor, be fined not exceeding ten dollars for every such offense; and, moreover, he and his sureties or any one or more of them, and the personal representatives of such of them as are dead, shall be liable to the person injured thereby to the extent of such injury with interest and ten per cent. damages.

Penalty and liability for neglect of duty, false return. &c.

159. Every constable going out of office may finish the business in his hands remaining unfinished, in the same manner as if his term had not expired, but if he declines to do so, he shall deliver to his successor all process and orders in his hands, with his proceedings thereon endorsed, and also all property levied on or attached and remaining unsold, and take such successor's receipt therefor, including in different receipts, the process and orders from different justices, and shall return such receipts respectively to the proper justices, who shall enter the same on their dockets and carefully preserve the originals. Upon the death of a constable, the same duty shall devolve on his personal representatives.

Constable going out of office may finish unfinished business, or deliver same to his successor.

Receipts.

To whom returned.

Duty as to same.

Duty of personal representative of deceased constable.

160. A justice shall have concurrent jurisdiction with circuit and county courts of offenses committed within his county or on any river or creek adjoining thereto, when the punishment is limited by law to fine not exceeding ten dollars, or imprisonment not exceeding ten days. But if a fine of more than ten dollars, or imprisonment for more than ten days may be imposed, the justice shall not have jurisdiction to try the case and render judgment therein.

Concurrent jurisdiction of justice with circuit and county courts, as to offenses committed in their counties.

161. The proceedings before the justice shall be by warrant of arrest in the name of the state, except that when an offence of which the justice has jurisdiction

is committed in his precinct or in that of a constable either of them may forthwith apprehend the offender or cause him to be apprehended, and in such case the offender may be tried before the justice and dealt with according to law, without such warrant.

Proceedings before
justice; exception.

Warrant of arrest
when issued and
what to contain.

162. The warrant of arrest shall be issued only on the information, under oath, of some credible person. It shall describe the offense alleged to have been committed, as heretofore required in such cases by law, and command the officer forthwith to apprehend the accused and bring him before the justice to be dealt with according to law.

Justice may try or
continue case.

163. On the appearance of the accused, the justice may proceed to try the case; but he may grant continuances, from time to time, if the circumstances of the case require it. If a continuance be granted at the instance of the accused, the justice, if he sees fit, may require him to enter into a recognizance, with surety deemed sufficient, conditioned for his appearance at the time and place appointed for trial, to answer for the offense with which he is charged, and if such recognizance be not given, may commit him to prison until the time appointed for trial; but such imprisonment shall not exceed five days. The accused, if such continuance be not at his

Recognizance of
accused; when may
commit to prison
for failure.

When not required,

Judgment on.

Proviso

instance, shall be discharged from custody on his own recognizance, or without a recognizance, as the justice shall deem proper. The justice may render judgment on any recognizance taken by him pursuant to this section: Provided, That unless the accused shall in writing waive his right to a trial by a jury of twelve men, the justice shall transmit all the papers in the case to the clerk of the county court. The clerk shall docket the same and it shall be tried at the next succeeding term of said court, as if it were an indictment found therein.

164. If the judgment be against the accused, it shall be for the costs of the proceeding in addition to

the fine and imprisonment imposed, and when the accused is sentenced to imprisonment, whether a fine be also imposed or not, or is imposed for non-payment of a fine and costs, the jailor's fee shall be included in the costs. Execution, to be collected out of the personal property of the accused, may be issued on such judgment for the fine and costs, or for the costs alone, if the judgment be for imprisonment and costs without fine. Fee bills may be issued against the accused for costs incurred at his instance, including a jailor's fees, under the same regulations and with like effect as in civil suits.

If accused found guilty, for what judgment given.

Execution for fine and costs.

Fee bills, &c.

165. All fines which accrue to the state, collected or paid in any proceeding under this act before a justice, shall immediately be paid by the constable receiving the same to the sheriff of the county. If any constable fail therein, he shall forfeit twenty dollars for every such offense. The sheriff shall enter the sums so paid to him to the credit of an account to be kept by him under the heading of "general school fund." All claims by justices, constables, jailors, and others, for fees due them in like proceedings in the county where the accused is acquitted, or when such fees could not be collected on execution or fee bills, by the exercise of proper diligence, shall be audited and examined by the county court, and if found correct, the court shall cause orders to be issued therefor on the sheriff, to be paid out of such fund, if sufficient, and charged to the said account. The sheriff, during the month of January or February, annually, shall render under oath to the auditor a true statement of the said account, and pay into the treasury of the state the net proceeds of the said fines as exhibited by the said account, to be appropriated as directed by the first section of article twelve of the constitution. He shall render such account to the county court at every annual settlement that he makes with same. If any sheriff fail herein, he shall forfeit twenty dollars;

Fines collected paid to sheriff.

Penalty.

To credit of "general school fund."

Claims paid out such fund,

Statement of sheriff to auditor.

Account to county court.

Penalty and liability.

and, moreover, he and his sureties, his and their personal representatives, shall be liable to the state in the same manner and to the same extent as for other moneys in his hands due the state. Every justice shall annually, in the month of January, certify to the sheriff of his county a list of all fines imposed by him during the preceding year. He shall also state in such list for which of such fines (if any) executions have not been returned, or returned unsatisfied, and for which (if any,) executions have been returned satisfied. Each constable shall annually render to the county court of his county, under oath a statement of all moneys received by him or fines imposed by justices, on or before the first day of the term of the court held for laying the levy.

Justice certify fines imposed to sheriff.

Annual statement of constable to county court.

Appeal of party sentenced, &c.

Papers in such case to be delivered by justice to clerk.

Proceedings of court.

Costs.

166. Every person sentenced to imprisonment as aforesaid, or fined a sum exceeding five dollars, by the judgment of a justice shall be allowed an appeal to the county court upon entering into a recognizance before the justice, with surety deemed sufficient, to appear before the said court on the first day of the next term thereof to answer for the offense wherewith he is charged, and not depart thence without leave of the court. If such appeal be allowed, the warrant of the arrest, if there be any, the transcript of the judgment, the recognizance, and other papers of the case, shall be forthwith delivered by the justice to the clerk of the court, and the court shall proceed to try the case as upon indictment or presentment, and render such judgment, without remanding the case, as the law and the evidence may require. If the judgment be against the accused, it shall include the costs incurred in the proceedings before the justice as well as in the said court, including an attorney's fee of five dollars.

167. It shall be the duty of a justice of the peace, in addition to his general jurisdiction and duties as a conservator of the peace, to prosecute and fine any

person who shall, in his presence or hearing, while
in the discharge of his duties as a justice, swear any
profane oath or oaths, not exceeding two dollars for
each offense.

Conservators of the
peace; power to fine
for swearing pro-
fane oaths, &c.

168. If a justice shall, from his own observation,
or upon information of others, have good reason to
believe that any person in his county is habitually
carrying about his person concealed weapons, such
as dirks, bowie-knives, pistols or other dangerous
weapons, it shall be the duty of such justice to cause
such person to be arrested and brought before him,
and if such person upon trial shall be found guilty,
he shall be fined not exceeding ten dollars.

Concealed weapons.

Penalty.

169. If any justice of the peace shall wilfully fail
to execute the duties imposed upon him by the one
hundred and sixty-seventh and one hundred and six-
ty-eighth sections of this act he shall be deemed guilty
of a misdemeanor, and liable to an indictment in the
circuit court of his county for the same, and if found
guilty, shall be fined not exceeding fifty dollars.

Penalty on justice
for failure to exe-
cute duties imposed

170. The justice shall in all cases have power to
summon witnesses to appear before him on the trial
of any cause, or upon the investigation of any sub-
ject of which he has jurisdiction, and compel their
attendance by fine or attachment.

Power to summon
witnesses and com-
pel attendance.

171. A justice upon the trial of any offense against
the state shall in his practice conform as near as may
be to the practice of the county court.

Practice in justice
court in trials of
offenses against
the State.

172. Chapter fifty of the code, and the act entitled,
"an act in relation to the jurisdiction, powers and
duties of justices of the peace and constables," ap-
proved January twentieth, 1873, and all other acts
and parts of acts inconsistent with this act, are hereby
repealed.

Inconsistent acts
repealed.

173. This act shall take effect on the first day of
April, 1873.

Commencement.

CHAPTER CCXXVII.

AN ACT to establish a reasonable maximum rate of charges for the transportation of passengers and freight and to prevent unjust discriminations and extortions in the rates to be charged by the different railroads in this state, for the transportation of passengers and freights on said roads.

Passed December 27, 1873.

Be it enacted by the Legislature of West Virginia:

Railroads limited,
as to compensation
for transportation
of passengers.

1. That all railroad corporations organized or doing business in this state under the laws or authority thereof, shall be limited to the rates of compensation for the transportation of passengers, which are herein prescribed.

Classification of
Railroads

2. All railroads in this state shall be classified according to the gross amount of their respective annual earnings per mile as follows:

Class A shall include railroads whose gross annual earnings, per mile, shall be ten thousand dollars or more, and narrow guage railroads whose gross annual earnings, per mile, shall be five thousand dollars or more.

Class B shall include railroads whose gross annual earnings, per mile, shall be eight thousand dollars, or any sum in excess thereof less than ten thousand dollars, and such narrow guage railroads whose gross annual earnings, per mile, shall be four thousand dollars, or any sum in excess thereof less than five thousand dollars.

Class C shall include railroads whose gross annual earnings, per mile, shall be four thousand dollars, or any sum in excess thereof less than eight thousand dollars, and such narrow guage railroads whose gross annual earnings, per mile, shall be two thousand dol

lars, or any sum in excess thereof less than four thousand dollars.

Class D shall include railroads whose gross annual earnings per mile, shall be any sum less than four thousand dollars, and narrow gauge railroads whose gross annual earnings per mile, shall be any sum less than two thousand dollars.

3. All railroad corporations, according to their classification as herein furnished shall be limited to compensation per mile, for the transportation of any person with ordinary baggage, not exceeding one hundred pounds in weight, as follows :

Maximum rate of charges, according to classification for transportation of persons with ordinary baggage.

Class A.

For any distance less than fifty miles, three and one-half cents per mile ; for any distance exceeding fifty miles and less than one hundred miles, three and three-tenths cents per mile ; for any distance exceeding one hundred miles and less than one hundred and fifty miles, three and one-fifth cents per mile ; for any distance exceeding one hundred and fifty miles and less than two hundred miles, three and one-tenth cents per mile ; for any distance exceeding two hundred miles and less than two hundred and fifty miles, three cents per mile ; for any distance exceeding two hundred and fifty miles and less than three hundred miles, two and nine-tenths cents per mile ; for any distance exceeding three hundred miles, and less than three hundred and fifty miles, two and four-fifths cents per mile ; for any distance exceeding three hundred and fifty miles, two and seven-tenths cents per mile.

Class B.

For any distance less than fifty miles, four cents per mile ; for any distance exceeding fifty miles and less than one hundred miles, three and nine-tenths cents per mile ; for any distance exceeding one hun-

dred miles and less than one hundred and fifty miles, three and eight-tenths cents per mile; for any distance exceeding one hundred and fifty miles and less than two hundred miles, three and seven-tenths cents per mile; for any distance exceeding two hundred miles and less than two hundred and fifty miles three and six-tenths cents per mile; for any distance exceeding two hundred and fifty miles and less than three hundred miles, three and one-half cents per mile; for any distance exceeding three hundred miles and less than three hundred and fifty miles, three and four-tenths cents per mile; for any distance exceeding three hundred and fifty miles, three and one-fourth cents per mile.

Class C.

For any distance less than fifty miles, four and one-half cents per mile; for any distance exceeding fifty miles and less than one hundred miles, four and three-fifths cents per mile; for any distance exceeding one hundred miles and less than one hundred and fifty miles, four and three-tenths cents per mile; for any distance exceeding one hundred and fifty miles and less than two hundred miles, four and one-fifth cents per mile; for any distance exceeding two hundred miles, four cents per mile.

Class D.

For any distance less than fifty miles, five cents per mile; for any distance exceeding fifty miles and less than one hundred miles, four and three-fourths cents per mile; for any distance exceeding one hundred miles and less than one hundred and fifty miles, four and one half cents per mile; for any distance exceeding one hundred and fifty miles and less than two hundred miles, four and one-fourth cents per mile; for any distance exceeding two hundred miles, four cents per mile.

Provided, That no such corporation shall charge, Provide as to children under twelve years of age.
demand or receive any greater compensation per
mile for transportation of children twelve years of
age or under, than half the rates above prescribed ;
and provided, also, a charge of ten cents may be Also as extra charge for failure to procure ticket
added to the fare of any passenger when the same is
paid upon the cars if a ticket might have been pro-
cured within a reasonable time before the departure
of the train, and if the failure to procure a ticket was
not caused by the ticket office being closed or without
a sufficient supply of tickets, or other neglect of the
company ; and provided further, if for any one pas-
senger the charge at the above rate would be less
than twenty-five cents, the same may nevertheless be
charged as a minimum.

4. All railroad corporations shall keep constantly
posted, in a conspicuous place, in all their ticket offices Required to keep posted certain sections of acts ; also table of distances and class of road.
and passenger and freight depots, a printed copy of
the first, second, third, fourth and fifth sections of
this act, together with a table of distances between
each and every station of their road, printed in legi-
ble type, and a statement showing the class to which
its road belongs.

5. Any railroad corporation which shall charge,
demand or receive any greater compensation for the Penalty for demanding or receiving greater compensation than authorized.
transportation of any passenger than is authorized
by this act, shall be liable to the party aggrieved in
the sum of five hundred dollars, and the same may
be recovered, together with all costs of suit and a
reasonable attorney's fee, to be taxed by the court,
in an action of debt in any court having competent
jurisdiction.

6. That all railroad corporations organized or doing
business in the state, under an act of incorporation Limitation as to rates for transportation of persons, goods, merchandise, &c.
or general law of this or any other state, or of the
United States, now in force, or which may be here-
after enacted, shall be limited to the rates of com-
pensation for the transportation of passengers, goods,

merchandise and all kinds of property, as herein prescribed.

Whenever any railroad corporation, as lessee or otherwise, operates any other railroad in connection with its own road, the provisions of this act as to charges for carrying freight and passengers shall apply to such other road, so operated, in like manner as if the same were a part of the line of the road owned by the corporation operating the same : and for such purpose all lines of railroads operated by the same company shall be considered as one and the same road.

Applicable to all lines of railroads operated by same company.

7. Goods, merchandise and all other kinds of property shall be classified for the purpose of transportation, as follows:

First Class.

Classification of goods, merchandise, &c.

Acid, by car-load ; ale, beer and porter, in bottles : bagging, bags, berries, books, baskets, four times first class ; broom-corn, pressed ; beadsteads, iron, capacity of car ; boots and shoes ; burning fluids : billiard tables, boxed ; blinds, bread, &c., brushes : bristles, burlaps, butter, fresh ; bed cords, beeswax, boiler felting, in rolls or bales ; carriages, not boxed : carriages, well boxed, three times first class ; cotton yarn, cards, carpeting, cloth, corks, cassia, in mats ; chairs, not boxed, estimated at fifteen pounds per cubic foot ; chairs, boxed, three times first class rates : china-ware, in boxes, barrels or casks ; caps, clocks and weights ; confectionery, cotton, waste, copper and brass vessels, castor oil, in cans or cases ; cotton, in bales ; crackers, covers and sieves, carpet lining, cocoa matting, coffee-mills, chains, cotton, woolen or hempen ; copying presses, farm wagons, fire crackers, deer skins, in bales ; ducks, domestics, sheetings, tickings, demins, in bales or boxes ; dry goods, in boxes or bales ; drugs and medicines ; joiner's work, dessicated meats and vegetables, furs, fish, fresh :

fruits, foreign, including currants, dates, figs, grapes, lemons, oranges, prunes, raisins; furniture, second-hand, well boxed, accompanied by passengers; furniture, knocked down and well boxed; forks, hay and manure; groceries, not otherwise enumerated: glass-ware, guns, rifles and other firearms; ginseng, glue, hats, harness, honey, hops, hair, in sacks; hides, dry; household goods, not furniture, well boxed; ink, indigo, ice, in small quantities; India rubber goods, iron castings, light; ink, printer's; isinglass, liquors, foreign and domestic; leather, loose; linsey, liquor, in glass; liquor, in wood; lead, in pipe, bar or sheet; milk, condensed; machinery, boxed, light; mouldings, mats, marble, wrought and finished; musical instruments, moss, in sacks, mineral water, in glass; machinery, unboxed; metallic coffins, nuts; oysters, in kegs, boxes or cans; oil, in glass; pickles, in glass; preserves, in glass; paper hangings, not boxed; peaches, prepaid; peltries, poultry, piano fortes, boxed; pipes, clay; printing presses, paper, printing and wrapping, in boxes; paper hangings, boxed; prunes, in casks; palm leaves, paste-board, pill boxes, plate and looking glasses, boxed; porcelain ware, printed matter in sheets, boxed; ploughs and cultivators, rattan, Russia bristles, refrigerators, rags, saddlery, scythes, snaths, steam boilers, under thirty feet; scales and scale beams, not boxed; sweet potatoes, sizing, shell, shrapnel, shovels, spades, soaps, fancy; straw goods, stoves, stove pipe and stove castings, sash and frames, skins, buffalo, sheep, deer, &c.; sleighs, boxed, three times first class; snuff, in jars; sardines, sewing machines, boxed; seeds, clover, grass; spices, ginger, pepper, mustard; seeds, not otherwise enumerated; turpentine, tobacco, in bales, leaf, cut or dry; tobacco, cut, in barrels or boxes; tobacco, manufactured; trunks, tin ware, twine, trees and shrubbery; tea, tubs, tin foil in boxes; tow, traveling bags, umbrellas, varnish, veneering, woolen goods, wax, wine, in boxes, baskets, or

Further classification of goods, &c.

Further classification of goods, &c.

casks; whips, warps, whalebone, wheelbarrows, wooden-ware, wagon bows and felloes, window glass, wood in shape, (carpenter's work, &c.,) less than car load; woolen yarn, wire cloth, yarn, cotton or woolen; yarn carpet, pressed in bales.

Second Class.

Alcohol, agricultural implements, (double rate;) agricultural productions, not specified; ale and beer, in casks; apples, green; axles, axes, bacon, loose; baking powders, bells, boiler flues, brimstone, bottles, barilla, bark and cob mills, butter, packed; binder's boards, blacking, beans and peas, cast-iron grain mills, Congress and Bedford water, in boxes or barrels; chains, charcoal, less than car-load; carriage springs, codfish, loose; candles, cocoa, chocolate, casia, coffee, ground, in boxes or barrels; coffee, in single sacks; coffee, in double sacks; capstands, copper, in plates, sheets, bolts, pigs, wire, nail or rod; copper bottoms, cheese, in boxes or casks; chair stuff, less than car load; crockery, in crates or hogsheads; dye-stuffs, in barrels or boxes; damsons, eggs, extract of coffee, extract of logwood, earthen-ware, fruit, dried domestic; flax, flaxseed, gunstocks, less than car load; gunny bags, gum, gas fixtures, boxed; hollow-ware, castings, less than car load; herring in boxes; hominy, hemp, yara, hinges, hoes and hollow-ware, hooks, iron, hoop, band and sheet; iron nuts and rivets, iron railing, iron safes, iron bolts or washers, in boxes or in casks; iron castings, in boxes or casks; iron facings, iron shutters; leather, in rolls or boxes; lightning rods, in bundles; liquorice, in mass or boxed; lithographic stone, machinery, boxed, heavy; mahogany boards and planks, marble, unwrought, (under three inches thickness;) mechanics' tools, melons, less than car load; oakum, onions, oil-cloth, not otherwise specified; oil, sperm, linseed, lard, tanner's, fish and coal; paints, all kinds; pickles, in casks; pork, and other fresh provisions;

pickles and preserves, in cans; plumbers' materials, in boxes or casks; queensware, quicksilver, in iron flasks; rubber car springs, rubber packing, rope and cordage, rice, in barrels, rice, in tierces, rosin; seeds, clover, grass and mustard; saltpetre, saleratus, starch, scales, boxed; school slates, stove blacking, shoe pegs, in barrels, soap, soda, shot, in bags; sugar, maple, sugar refined; safes, tar, tallow, type, tin, tacks, in boxes or barrels, telegraph wire, veneering, boxed; whisky, wire, wire-fencing, willow reeds, in bundles; white lead, zinc, in rolls, sheets or casks.

Further classification continued.

Third Class.

Anchors, anvils, axle grease, bacon, in casks; black lead, blacking salts, bacon or salt pork, in bags or loose; burr blocks, beef, salted, in casks, chicory, cider, in wood; chains, in casks; crucibles, dye wood, in stick; flour, in bags or barrels; feed, bran, ship stuff, fish, pickled and dry salted; gaspipe; glauber salts, glue, pieces; grain, loose, by car load; hides, green and salted; hoofs, hardware and cutlery, horns, horse shoes, in packages; hollow-ware castings, car load; herring, in kegs; hogs, dressed, in car loads; hogs' hair, iron flues, bar, boiler and castings, medium size, jute, junk, lead, in casks; laths, lard, lead, pig; lime, in casks, except manure; molasses, meal, in bags or barrels, less than car load; machinery, heavy; madder, millstone, finished; marble slabs, over three inches thick; nails, in boxes or barrels; nails and spikes, nail rods, nuts, in double sacks, boxes or casks; oil cake, loose; oars, oysters and clams in shell; pork, salted, loose; pork, salted, casks or boxed; putty, potatoes, less than car load; pitch, sweet potatoes, in car load; pumice stone, in casks; roofing, in boxes or rolls; roofing iron, rubber car springs, in boxes or casks; salt, less than car load; shot, in kegs; succory, steam engines, steel, sugar, not refined; sumac, ground, actual weight; salt, cake;

Further classification of goods, &c.

scythe stone, spelter, tobacco, unmanufactured ; vegetables, less than car load ; vinegar, volute car springs, whitening wire rope, zinc, in sheet, in casks or cases.

Fourth Class.

Ashes, pot ; ashes, pearl ; ashes, wood ; bark, (tanner's,) twenty per cent. less, by capacity of car ; bark, ground ; bones, bone dust ; barley rated as grain ; barytes, brick, brimstone in barrels and hogsheads, brick, for short distance ; bath brick, casting, iron, heavy and plain ; copper ore, charcoal, in car loads : coal, cement, clay, car-wheels, chalks, chain cable, car-axles, fire-wood ; meal in bag or barrel, when in full car loads ; gravel, grind-stones, gun-stocks, car loads : guano, grain, corn, oats, barley, wheat, rye, malt, in bag and casks, (weight of package to be charged ;) hay and straw, when without other loading, fourth class by capacity of car ; loaded with other goods, double fourth class, by actual weight ; iron, pig, railroad ; iron scraps, iron castings, heavy ; iron ore, ice, by car load ; locomotive tire, lime in car loads for building ; limestone, live stock, lumber, manganese, mahogany, logs, marble in blocks, unwrought ; meal in car loads ; manures, millstones, rough ; melons, by car load ; nails and spikes, by car load ; oil cake in casks or barrels ; ores, manganese, plaster, stone ; potatoes, in car loads ; plaster, ground ; railroad chains and spikes, railroad iron, sumac leaf, capacity of car, smaller quantities double fourth class ; salt, in sacks or barrels by car load ; soap stone, stone unwrought ; sand hooks, staves, headings, &c., slate, soda ash, vegetables, by car load ; water-pipes, wood in shape, finished, by car loads not less than capacity. Unenumerated articles shall be limited to the rates charged on analogous or like articles.

Unenumerated articles,

Double First Class.

Acid, less than car load ; ammunition ; broom corn, loose ; batting ; bonnets, cabinet ware set up and

boxed ; carboys, empty : caps in trunks ; cigars, boxed and strapped ; demijohns ; dry goods, in trunks ; cotton batting ; tin safes ; feathers ; fowls, alive in coops or crates ; furs, in bales or trunks ; furniture, set up and boxed ; hats, in trunks ; looking glasses ; mattresses ; powder ; sheep, alive in coops or crates ; willow-ware, wagons (children's,) not boxed. Freights of all classes transported by passenger trains.

Further classification of goods, &c.

One and a half first class.

Buffalo robes ; oil cloths, in boxes twelve feet long or over ; picture frames ; steam boilers over thirty feet ; toys, boxed ; trees and shrubbery, baled ; wagons and hobby horses, boxed ; wool, domestic and foreign.

Special rates.

Carriages may be rated for way transport to weigh as follows : A four-horse vehicle to weigh four thousand and five hundred pounds ; a two-horse vehicle to weigh two thousand and five hundred pounds ; a one-horse vehicle to weigh one thousand and five hundred pounds.

Special rates for carriages, fire-wood, brick, &c.

Firewood, posts and rails, if dry, at four thousand pounds, if green, five thousand and five hundred pounds per cord.

Tanner's bark, dry, two thousand pounds, if green, three thousand pounds per cord.

Pine and hemlock boards, plank and scantling if well seasoned, at two thousand and five hundred pounds, if not well seasoned, three thousand pounds if green, three thousand and five hundred pounds per thousand feet board measure ; ash, oak, walnut, maple and cherry, if dry, three thousand and five hundred pounds, if green, five thousand and five hundred pounds per thousand feet, board measure ; green whitewood boards, four thousand pounds per thousand feet, board measure.

Brick per thousand, five thousand pounds.

Maximum rates per ton, per mile, for transportation of goods, merchandise, &c., according to class.

8. All railroad corporations according to the classification in section seven of this act, shall be limited to compensation per ton per mile for the transportation of goods, merchandise and all other kinds of property as follows :

First class.

For any distance not exceeding fifty miles, five cents per ton per mile ; for any distance exceeding fifty miles and not more than one hundred miles, four cents per ton per mile ; for any distance exceeding one hundred miles and not more than one hundred and fifty miles, three and one half cents per ton per mile ; for any distance exceeding one hundred and fifty miles and not more than two hundred miles, three cents per ton per mile ; for any distance exceeding two hundred miles and not more than two hundred and fifty miles, two and three-fourth cents per ton per mile ; for any distance exceeding two hundred and fifty miles, two and one half cents per ton per mile.

Second Class.

For any distance not exceeding fifty miles, four cents per ton per mile ; for any distance exceeding fifty miles and not more than one hundred miles, three and one half cents per ton per mile ; for any distance exceeding one hundred miles and not more than one hundred and fifty miles, three cents per ton per mile : for any distance exceeding one hundred and fifty miles and not more than two hundred miles, two and three-fourths cents per ton per mile ; for any distance exceeding two hundred miles, and not more than two hundred and fifty miles, two and one-half cents per ton per mile ; for any distance exceeding two hundred and fifty miles, two and one fourth cents per ton per mile.

Third Class.

For any distance not exceeding fifty miles, three

and one-half cents per ton per mile ; for any distance exceeding fifty miles and not more than one hundred miles, three cents per ton per mile ; for any distance exceeding one hundred miles and not more than one hundred and fifty miles, two and three-fourth cents per ton per mile ; for any distance exceeding one hundred and fifty miles and not more than two hundred miles, two and one-half cents per ton per mile ; for any distance exceeding two hundred miles and not more than two hundred and fifty miles, two and one fourth cents per ton per mile ; for any distance exceeding two hundred and fifty miles, two cents per ton per mile.

Fourth Class.

For any distance exceeding fifty miles, three and one-half cents per ton per mile ; for any distance exceeding fifty miles and not more than one hundred miles three cents per ton per mile ; for any distance exceeding one hundred miles and not more than one hundred and fifty miles, two and one-half cents per ton per mile ; for any distance exceeding one hundred and fifty miles and not more than two hundred miles, two and one-fourth cents per ton per mile ; for any distance exceeding two hundred miles and not more than two hundred and fifty miles, two cents per ton per mile ; for any distance exceeding two hundred and fifty miles, one and three-fourths cents per ton per mile.

Double first class at double the rate specified for the first class.

One and one-half first class, one-half the rates of the rates additional specified for the first class.

Provided, That such railroad corporation for the transportation of goods, merchandise, and all other kinds of property in a less quantity than two thousand pounds, and more than five hundred pounds shall be entitled to augment the foregoing rates, one-fourth,

Provided as to goods, &c., in a less quantity than 2,000, and more than 500 pounds, and also less than 500 pounds.

and when offered in a less quantity than five hundred pounds, shall be entitled to charge one and a half first class rates.

Minimum charges

If for any one consignment the charge at the above rates would be less than twenty-five cents, the same may nevertheless be charged as a minimum. And if the charge for an entire car load for any distance, at the foregoing rates should be less than five dollars, such corporation may nevertheless charge that sum as a minimum for the transportation of such car load.

By laws, &c., establishing higher rates of tolls, &c., declared void.

All rules, regulations or by-laws of any railroad corporation establishing or charging higher rates of tolls or compensation than is hereinbefore prescribed, are hereby declared void.

To transport freight and passengers when offered

9. That all railroad corporations whose lines of road shall extend into or through this state, and which extensions are incorporated by the laws of this state or any other state, or the United States, shall take and transport passengers and freight when offered: Provided, That such railroad corporation shall not be permitted to charge for the transportation of freight and passengers, or either, a less sum from one terminus of their road to the other, than from any intermediate station to either terminus thereof, nor a greater sum for the transportation of freight and passengers, or either, from any intermediate station to either terminus of road or from either terminus to an intermediate station, or from one intermediate station to another, than from any intermediate station to either terminus, or from either terminus to any intermediate station, or from one intermediate station to another, where the distance is less.

Provide as to charges from one terminus to another, and intermediate stations, &c.

Not lawful to charge or receive any fee or commission other than regular fees prescribed for shipping &c., any goods, me andise, &c.

10. It shall not be lawful for any railroad corporation or their agent or agents, at any depot in this state, to charge or receive any fee or commission other than the regular transportation fees herein prescribed, for manifesting, receiving, handling, shipping

or delivering any goods, merchandise and all other kinds of property for transportation on such railroad; except for the storage of articles in any depot or warehouse of the company which remain in said depot or warehouse, after the lapse of twenty-four hours from the time the consignee is notified by the agent or other employee of the company of their arrival. A charge may also be made for such longer time as they may so remain, not exceeding the ordinary warehouse rates charged in the town in which or near which the depot or warehouse is situated.

Exceptions as to storage charges.

11. All depot agents of any railroad corporation having depots in this state shall, if required by the consignor, weigh goods, merchandise and all other kinds of property delivered for transportation at the depot, when delivered, and receipt for the same.

To weigh goods, &c. when required and receipt for same.

12. The term "railroad corporation," contained in this act, shall be deemed and taken to mean all corporations, companies, public carriers or individuals now owning or operating, or which may hereafter own or operate, any railroad in this state.

Definition of words "railroad corporation."

13. This act shall not be held to apply to any city or street railroad.

Not to apply to city or street railroad.

14. Any railroad corporation, agent or person which shall fix, demand, take or receive from any person or persons any greater toll or compensation for the transportation, receipt, handling or delivery of goods or merchandise, or for weighing the same in violation of the provisions of this act, shall forfeit and pay for any such offence any sum not exceeding one thousand dollars and costs of suit, including a reasonable attorney's fee, to be taxed by any court where the same is heard by appeal or otherwise, to be recovered in action of debt by the party aggrieved in any court having jurisdiction thereof. And any officer, agent or employe of any such railroad corporation who shall knowingly and wilfully violate the provisions

Penalty on railroad agent or person for violating provisions of this act.

How recovered.

Liability to the penalties.

of this act, shall be liable to the penalties prescribed in this section.

Willful violation deemed a forfeiture of franchises.

15. Any wilful violation of any of the provisions of this act on the part of any railroad corporation shall be deemed and taken as a forfeiture of its franchises, and such corporation so offending may be proceeded against by the prosecuting attorney in any county through or into which its road may run, by scire facias or upon information in the nature of a quo warranto to judgment of ouster and final execution.

How proceeded against,

Railroad companies declared domestic companies or corporations.

16. All railroad companies doing business in this state under charters granted or laws passed by the state of Virginia or this state, are hereby declared to be domestic companies or corporations, and shall be treated as such in all cases.

Commencement.

17. This act shall take effect and be in force from the first day of April, 1874.

CHAPTER CCXXVIII.

AN ACT to amend and re-enact sections three, four, five, six, nine, ten, eleven, twelve and thirteen of chapter thirty-six of the code, concerning the recovery of fines.

Passed December 29, 1873.

Be it enacted by the Legislature of West Virginia :

Code amended.

1. That sections three, four, five, six, nine, ten, eleven, twelve and thirteen of chapter thirty-six of the code be amended and re-enacted so as to read as follows :

Fines : when proceedings to recover may be by indictment or presentment.

" 3. Where fine and imprisonment or fine and any corporal punishment is imposed by law, the proceedings shall be by indictment or presentment in the cir.

cuit or county court of the county wherein the offense was committed, unless otherwise specially provided."

"4. Where a fine alone is imposed, if limited by law to an amount less than ten dollars, it may be recovered upon warrant of a justice having jurisdiction; and whether so limited or not, it may be recovered by presentment or indictment in the circuit or county court of the county wherein the offense was committed."

When by warrant before justice, &c.

"5. The proceedings in all cases shall be in the name of the state, unless otherwise specially provided."

Proceeding to be in name of State.

"6. Except where the fine is limited by law to an amount not exceeding ten dollars, and imprisonment or corporal punishment cannot be lawfully inflicted, the defendant may demand as of right a trial by a jury of twelve men. If a jury be impaneled and find the defendant guilty, they shall ascertain the amount of the fine unless it is fixed by law."

Trial by jury

Their verdict.

"9. It shall be the duty of the prosecuting attorney of every county to institute and prosecute in the circuit and county courts of his county proper proceedings for the recovery of all fines imposed by law, where the cases are cognizable in such courts. He shall superintend the issuing of executions on judgments for fines rendered by such courts and cause all delinquencies in relation to the service or return of such executions to be duly prosecuted. If judgment be rendered by the circuit or county court for a fine, whether with or without imprisonment or corporal punishment, a docket fee of ten dollars for the prosecuting attorney shall be taxed in the costs against the offender."

Duty of prosecuting attorney as to recovery of fines.

His fees.

"10. On a judgment for a fine rendered by a circuit or county court, the court may order a writ of fieri facias to be issued at any time during the term at which such judgment was rendered. If such writ

Writ of fieri facias may issue on judgment for fines.

be not so ordered, it may be issued by the clerk upon the order of the prosecuting attorney at any time after the adjournment of the court; and if the judgment be for a fine with imprisonment, the court may at any time during the said term, order that the defendant against whom said judgment was rendered be confined in jail until the fine and costs are paid, in addition to the term of imprisonment fixed by the judgment: Provided, Such additional confinement shall not be a longer period than sixty days."

Defendant may be imprisoned till fine and costs are paid.

Not to exceed sixty days.

Capias pro fine abolished, except in certain cases.

"11. The writ of capias pro fine is abolished, except in cases of judgment for fine and imprisonment."

"12. On every judgment for a fine rendered by a circuit or county court, if no special order be made by the court or direction given by the prosecuting attorney, the clerk of the court shall issue a writ of fieri facias immediately after the term at which such judgment was rendered."

When clerk must issue fieri facias on judgment for fine.

List of fines to be returned to auditor

"13. The clerk of every circuit or county court shall within thirty days succeeding the first day of July in every year, render under oath to the auditor a list of the fines imposed in his court during the year ending on the said first day of July, excepting those cases in which on the said first day of July executions had been issued and were not returnable before that day, and fines which do not go to the state either wholly or in part; cases in which executions had been issued before the commencement of the said year but were returnable within the said year shall likewise be included."

CHAPTER CCXXIX.

AN ACT to amend and re-enact section three of chapter one hundred and fifty-nine of the code, relating to trial and its incidents.

Passed December 29, 1873.

Be it enacted by the Legislature of West Virginia :

1. That section three of chapter one hundred and fifty-nine of the code be amended and re-enacted so as to read as follows: Code amended.

“3. In case of a felony, a list of twenty qualified jurors shall be made from those in attendance, or who may be summoned by order of the court, from which the accused may strike off eight, or a less number, of the names on said list; and if he fail to do so, the number not stricken off by him shall be stricken off by the prosecuting attorney, so as to reduce the panel to twelve, who shall compose the jury for the trial of the cause, but the accused shall have no other peremptory challenge.” Jury in criminal cases; how made.
Accused may strike off eight names from panel.
Shall have no other peremptory challenge.

2. This act shall be in force from its passage.

CHAPTER CCXXX.

AN ACT to amend and re-enact sections one and six of chapter one hundred and fifty-six of the code, concerning arrest, commitment and bail. ✓

Passed December 29, 1873.

Be it enacted by the Legislature of West Virginia :

1. That sections one and six of chapter one hundred and fifty-six of the code be amended and re-enacted so as to read as follows: Code amended.

“1. A judge of a circuit court or a president of a county court, in vacation as well as in term time, or a justice may issue process for the apprehension of a person charged with an offense.” By whom process of arrest issued.

Bail in criminal
case, when allowed
and by whom.

"6. The president of a county court, or a justice thereof, in vacation, may let to bail, a person who is charged with, but not convicted of, an offense not punishable with death or confinement in the penitentiary, or of which, if it be so punishable, only a light suspicion of guilt falls on him.

If the offense be so punishable, and there is good cause to believe such person guilty, he shall not be let to bail by a president of a county court, or justice or justices, either in or out of court, and in no case shall a person in jail under an order of commitment be admitted to bail by a president of a county court, or justice, (in vacation,) in a less sum than was required by such order. But a circuit court, or any judge thereof, may admit any person to bail before conviction."

Commencement

2. This act shall be in force from its passage.

CHAPTER CCXXXI.

AN ACT supplemental to an act entitled "An act for the better government of the Berkeley Springs in the county of Morgan," passed February 28, 1872.

Passed December 20, 1873.

Be it enacted by the Legislature of West Virginia:

Trustees authorized
to lease property.

1. That the trustees of the Berkeley Springs shall have full power and authority, anything in any law to the contrary notwithstanding, to lease for any term or terms the public grounds in the town of Bath, in the county of Morgan, known as the Public Square, together with the medicinal springs and improvements thereon or any part thereof, upon such terms as they may deem best: Provided, however, that the party or parties, corporation or corporations,

Provided.

so leasing, shall be required to keep the said property baths and springs in good order and condition, and failing to do so shall forfeit the said lease or leases; and provided, also, that nothing herein contained shall affect the vested rights of parties entitled to use the baths aforesaid.

2. That the trustees of the Berkeley Springs aforesaid shall be and they are hereby authorized to purchase as a part of the public square, the property in said town of Bath known as the Gilmore lots heretofore annexed to said square, and to pay for the same, and also to execute in due form of law one or more mortgages on all the public grounds, springs and improvements, including the said Gilmore lots, upon such terms and for such amounts as they may deem necessary to pay the present liabilities of the said property, to erect another pool bath, and also to put in good order the present baths, grounds and improvements: Provided, however, that the total amount of said mortgage or mortgages at any one time shall not exceed the sum of \$10,000.

Authorized to purchase the Gilmore lots and pay for same;

Also to execute a mortgage to pay present liabilities and to put in good repair the grounds, baths, &c.

Amount of mortgage limited.

3. That this act shall be in force from its passage. Commencement.

CHAPTER CCXXXII.

AN ACT authorizing and requiring the seal of courts of record to be affixed to the certificate attached by the clerks thereof, to claims payable out of the state treasury.

Passed December 29, 1873.

Be it enacted by the Legislature of West Virginia :

1. All claims required by law to be allowed by any court and payable out of the state treasury, shall have the seal of the court allowing or authorizing the payment of the same, affixed by the clerk of such

Claims allowed and payable out of State treasury to have seal of court affixed by clerk to his certificate.

Auditor not to pay
unless seal thereto
attached.

court to his certificate of its allowance ; and no such claim shall be audited and paid by the auditor unless the seal of such court be thereto attached as aforesaid.

Clerk to charge no
fee for seal.

2. No tax or fee shall be charged by the clerk for fixing his seal to the certificate referred to in this act.

Commencement.

3. This act shall take effect and be in force on and after the thirtieth day after its passage.

CHAPTER CCXXXIII.

AN ACT imposing a license tax on peddlers.

Passed December 29, 1873.

Be it enacted by the Legislature of West Virginia :

Peddlers must be
licensed.

1. That no person shall without a license granted in the mode prescribed by the thirty-second chapter of the code of West Virginia, sell as hawker or peddler any personal property, goods wares or merchandise, patent specific or quack medicines : Provided.

Proviso as to man-
ufacturers of goods
in this State.

That no company or person engaged in manufacturing goods in this state shall be required to pay a license as peddler for selling such goods.

Penalty for doing
business without
license.

2. Any person violating the provisions of this act shall pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense.

Rate of tax to be
paid.

3. The state tax on the license hereby authorized shall be as follows :

If the peddler transport his goods, wares or merchandise in a carriage of any description, the tax shall be one hundred dollars in every county in which he sells or offers to sell, and no abatement therefrom shall be allowed if the goods and chattels proposed to be sold belong to a merchant and he be the peddler.

If the goods and chattels be transported in any other way than in a carriage the tax shall be twenty-five dollars

If the peddling be of patent, specific or quack medicines, the state tax shall be twenty-five dollars.

4. This act shall be in force from its passage.

Commencement.

CHAPTER CCXXXIV.

AN ACT amending and re-enacting chapter eighty-seven of the code, concerning fiduciaries generally.

Passed December 29, 1873.

Be it enacted by the Legislature of West Virginia :

1. That chapter eighty-seven of the code be and is hereby amended and re-enacted so as to read as follows:

Chapter 87 of Code amended.

"1. The clerk of every circuit or county court shall, in a book provided for the purpose, keep a record of any personal representative, guardian, curator or committee, authorized to act as such under orders of his court. Such record shall show in separate columns:

Fiduciaries; clerk to keep list of.

1. The name of every such fiduciary ;

What such list to show.

2. The name of the decedent for whose estate he is representative ;

3. The name of the living person for whom he is guardian, curator or committee ;

4. The penalty of his bond ;

5. The names of his sureties, and

6. The date of the order conferring his authority.

If afterwards, such authority be revoked the clerk shall enter in another column the date of the order of revocation. Any clerk failing to make such entry as to any fiduciary within ten days after the order

Penalty for failure. conferring or revoking the authority, as the case may be, or to index the same within the like time, in the name of the decedent or person represented by such fiduciary, shall for every such failure forfeit twenty dollars."

Clerk's duty as to their bonds

"2. The clerk at the time of making such entry as to any fiduciary shall examine whether he has given such bond as the law requires and if it appear that he has given no bond or that his bond is defective, shall make report thereof to his next court."

Inventory of estate, when to be returned to clerk, and of what

"3. Every personal representative, guardian, curator or committee shall, within four months after the date of the order conferring his authority, return to the said clerk an inventory of all the personal and real estate which has come to his possession or knowledge, or which is under his management or subject to his authority in his fiduciary character; and shall within four months after any other such estate shall come to his possession or knowledge return to the said clerk a further inventory thereof. If he fail to do so, he shall pay a fine of not less than fifty nor more than five hundred dollars. An appraisalment made according to the eighty-fifth chapter, shall be considered an inventory of such estate as is therein mentioned, if it be signed by the personal representative."

Penalty for failure

"4. Every such fiduciary shall within four months after selling any property as such, return to the said clerk an account of such sales. And when sale of personal property is made under any deed of trust otherwise than under a decree, there shall, within six months after the sale be returned by the trustee to the clerk of the court wherein the said deed may have been first recorded, an inventory of the property sold and an account of the sales. Any trustee failing to comply with this section shall forfeit his commissions on such sales."

Account of sales; when to be returned.

When inventory of property sold to be returned.

Trustee failing, forfeits commission.

"5. Every inventory and account of sales returne

under the two preceding sections shall be recorded by the clerk.” Inventory and account of sales to be recorded.

“6. If any fiduciary mentioned before in this chapter, or any agent or attorney at law shall, by his negligence or improper conduct lose any debt or other money, he shall be charged with the principal of what is so lost and interest thereon in like manner as if he had received such principal. And if any personal representative, guardian, curator or committee shall pay any debt, the recovery of which could be prevented by reason of illegality of consideration, lapse of time or otherwise knowing the facts by which the same could be so prevented, no credit shall be given him therefor.” Liability of fiduciary for debts lost or improperly paid.

“7. A statement of all the money which any personal representative, guardian, curator or committee shall have received or become chargeable with or have disbursed, within one year from the date of the order conferring his authority or within any succeeding year, together with the vouchers for such disbursements shall, within six months after the end of every such year, be exhibited by him before a commissioner of the court wherein the order was made conferring his authority; and a statement of all the money which any trustee acting under a trust created hereafter other than a deed of trust on real estate to secure the payment of debts or to indemnify a surety, shall have received or become chargeable with or have disbursed within a year from the date of such trust or within any succeeding year, together with vouchers for such disbursements, shall be laid by him before a commissioner of the court of the county wherein the instrument creating the trust was first recorded.” Accounts to be rendered.

“8. Any such fiduciary who shall wholly fail to lay before such commissioner a statement of receipts for any year within six months after its expiration, Penalty for failure.

shall have no compensation whatever for his services during the said year; and though a statement be laid before the commissioner, yet if such fiduciary be found chargeable for that year, with any money not embraced in the said statement, he shall have no commission on such money unless allowed by the court. This section shall not apply to a case in which within six months after the end of any one year, such fiduciary shall have given to the parties entitled to the money received in such year a statement of the said money and actually settled therefor with them; nor to a case in which within the said six months after the end of any one year a fiduciary shall have laid a statement of his receipts within such year before a commissioner, who may in a pending suit, have been ordered to settle his account."

Cases to which forfeiture of commissions does not apply.

How fiduciaries compelled to account.

"9. When any fiduciary shall have so failed to lay before such commissioner a statement of his receipts for any year, a commissioner before whom the said statement might have been laid, shall, upon request made to him, within ten years from the commencement of such year, by any person who is interested as creditor, legatee, distributee or otherwise; or who appears as next friend of an infant so interested, issue a summons directed to the sheriff or other officer of any county, requiring him to summons such fiduciary to lay before the commissioner a statement of his receipts and disbursements accompanied by his vouchers for such year, and for the time which may have since elapsed. If the same be not, within one month after the service of such summons, laid before the commissioner who issued it, he shall, on being requested so to do, report the fact to the court which appointed him; and said court shall take such measures, by rule and attachment, to compel the performance, by the fiduciary, of his duty."

"10. When any personal representative, guardian, curator, or committee, except a sheriff or other officer,

shall have laid such statement before a commissioner, he shall examine whether said fiduciary has given bond as the law requires, and whether it is in a penalty and with sureties sufficient. Any commissioner of the court in which the order was made, conferring on said fiduciary his authority, shall at any time before such statement is laid before a commissioner upon the application of any person who is interested or appears as next friend of an infants interested, after reasonable notice to such fiduciary, examine into any of the said matters, or inquire whether by reason of the incapacity, misconduct, or removal of any fiduciary, or for any other cause, it is improper to permit the estate of the decedent, ward, or other person to remain under his control. The result of every such examination and inquiry shall be reported by him to the court by which he is appointed."

Bonds of fiduciaries; commissioners to report on.

When commissioner to enquire into the propriety of allowing estate to remain in his hands.

Result to be reported to court.

"11. The court under whose orders any such fiduciary derives his authority, when it appears proper on such report of the clerk or a commissioner, or on evidence adduced by a surety or the representative of a surety for such fiduciary, or by any other person interested, may at any time, whether such fiduciary shall or shall not have before given any bond, or whether he shall have given one with or without sureties, order him to give before such court a new bond within a prescribed reasonable time in such penalty, and with or without sureties as may appear proper, and may if such order be not complied with, or whenever from any cause it appears proper, revoke and annul his powers. But no such order shall be made, unless reasonable notice appear to have been given to such fiduciary by the commissioner who made such report, or by the service of a rule or otherwise. And no such order of revocation shall invalidate any previous act of such fiduciary."

When court may require bond or new bond, or revoke authority of fiduciary.

Notice to fiduciary.

Order of revocation not to invalidate previous acts of fiduciary.

Effect of such new bond.

"12. Every bond executed with sureties under either of the two preceding sections shall, without any express provision therein to that effect, relate back to the time of the qualification of the fiduciary and bind the obligors therein for the faithful discharge of the duties of his office or trust from that time, as effectually as if it had been then executed; and the sureties in the former bond and their representatives shall upon the execution of such new bond, be forthwith discharged, except as to any matter for which a suit may be then depending on the former bond against any such sureties or their representatives, in which case such suit may be prosecuted to judgment or decree; but as to every such matter the new bond shall, without any express provisions therein to that effect, bind the obligors therein to indemnify the sureties in the former bond against all loss or damage in consequence of executing the former bond."

Court to appoint new fiduciary when authority of former one revoked.

"13. After the date of any order revoking and annulling the powers of any fiduciary, the court in which he qualified shall exercise such jurisdiction either by appointing an administrator de bonis non, or a new guardian, or otherwise as it could have exercised if the said fiduciary had died at that date."

After what notice commissioner may receive proof of debts and demands.

"14. Any commissioner who has for settlement the accounts of a personal representative of a decedent shall, when requested to do so by such representative or any creditor, legatee or distributee of the decedent, appoint a time and place for receiving proof of debts or demands against the said decedent or his estate, and before the said time post a notice of such time and place at the front door of the court house of the county on the second Monday of two successive months.

Power to adjourn. When and how account made out.

"15. The commissioner may adjourn from time to time for receiving such proof, and shall within one year from the time first appointed for receiving such proof, make out an account of all such debts or de-

mands as may appear to him to be sufficiently proved, stating separately those of each class."

"16. Every commissioner shall on the first Monday of every month, post at the front door of the court house of his county a list of the fiduciaries whose accounts are before him for settlement, stating the names of such fiduciaries, the nature of their accounts, whether as personal representative, guardian, curator, committee or trustee, and the names of their decedents or of the persons for whom they are guardians, curators or committees, or under whose deed or other instrument of trust they are acting. No account of any fiduciary shall be completed by any commissioner until it shall have been mentioned in such list, nor for ten days after being so mentioned.

Commissioner to post list of fiduciaries whose accounts are before him; how and when.

What time to elapse before completing accounts.

"17. When a commissioner has before him for settlement the account of a fiduciary for any year, if there be any time prior to such year for which the fiduciary has not settled, the settlement shall be also for such time. Any person who is interested or appears as next friend for another interested in any such account may, before the commissioner, insist upon or object to anything which could be insisted upon or objected to by him, or for such other before a commissioner acting under an order of a court of chancery for the settlement thereof made in a suit to which he or such other was a party."

For what time settlement to be

What may be insisted on or objected to before commissioner.

"18. The commissioner in stating and settling the account shall allow the fiduciary any reasonable expenses incurred by him as such; and also, except in cases in which it is otherwise provided, a reasonable compensation in the form of a commission (on receipts) or otherwise."

Expenses and compensation allowed fiduciary.

"19. Every account stated under this chapter shall be reported with any matters specially deemed pertinent by the commissioner, which may be required by any person interested to be so stated."

What matters to be reported.

Report to remain in
Commissioner's of-
fice ten days.

Exceptions thereto
may be filed.

When report to be
returned.

What to be return-
ed therewith.

When court to ex-
amine report
with exceptions.

How to correct
errors.

May re-commit re-
port.

Impanel a jury,
or confirm report.

Report to be
recorded.

Vouchers, &c., how
disposed of.

Effect of confirma-
tion of report.

"20. Such report shall remain in the commissioner's office for ten days after it is completed, during which time any person interested may inspect the same and file exceptions thereto."

"21. The commissioner shall file the report in the office of the court by which he is appointed, as soon as practicable after the expiration of the said ten days; and with his report shall return the said exceptions, with such remarks as he may see fit to make, and such of the vouchers or evidence before him as any person interested may desire him to return, or as he may deem proper."

"22. The court at its first term for the trial of causes after the report may have been filed in its office, shall examine the same with such exceptions thereto as may be filed at any time before such examination. It shall correct any errors which may appear on the exceptions, and any appearing on the face of the account whether excepted to or not; and to this end may re-commit the report to the same or another commissioner as often as it sees cause; or it may cause a jury to be impanelled to inquire into any matter which in its opinion, should be ascertained in that way; or it may confirm the whole or in a qualified manner. The clerk shall, in a book kept for the purpose, record every report which may be so confirmed, and at the foot of it the order of confirmation. Any voucher or other evidence remaining with the commissioner at the time of such confirmation and not wanting for any further matter of inquiry before him, shall be returned by him to the party who filed the same."

"23. The report to the extent to which it may be so confirmed, shall be taken to be correct, except so far as the same may in a suit in proper time, be surcharged or falsified."

"24. When it appears by a report made as afore-

did, or a special report of the commissioner, that money is in the hands of any such fiduciary, the court before which the report so comes may order the same to be invested or loaned out, or make such other order respecting the same as may seem to it proper."

Money in fiduciary's hands may be invested or loaned out by order of court.

"25. When any securities for money loaned or invested shall be standing in the name of any fiduciary who shall have died or whose power shall have been revoked, and such fiduciary, or his personal representative, shall not have transferred such securities to his successor the court in which such fiduciary shall have qualified, upon the petition of such successor or of any other person interested, may direct such securities to be transferred to such successor and may direct the dividends, interest or proceeds of the said securities to be received or paid in such manner as the said court shall think proper; the said court may also in a case before it, direct such securities to be transferred to a receiver of said court or otherwise."

How securities may be transferred to successor of fiduciary.

Interest, dividends, &c.; how disposed of.

May transfer securities, also to receiver.

"26. When a court shall have confirmed, either in whole or in a qualified manner, a report of the accounts of any guardian, curator, committee or trustee as aforesaid, such court may order payment of what shall appear due on such accounts, to such persons as would be entitled to recover the same by suit in equity."

When court may order payment of dues on accounts.

"27. When a court shall have so confirmed a report of the accounts of any personal representative, and of the debts and demands against his decedent's estate, it shall order to be applied to the payment of such debts and demands, so much of the estate in the hands of such representative and to such creditors as shall appear proper, reserving when it seems to the court reasonable to do so, to meet a claim of a surety for the decedent or any other contingent claim against the estate, the proof of which has to be de-

How payment ordered of estate in hands of personal representative.

Fund may be reserved to meet further claims.

ferred, or to meet any other claim not finally passed upon, such sum as may be deemed sufficient to pay it or a proportion thereof, equal to what is ordered to be paid to other creditors of the same class, should the payment of it or of such proportion afterwards appear proper."

Payment of claims
subsequently al-
lowed.

"28. Upon any such claim being allowed, subsequent to any dividend, there shall be ordered to be paid out of the estate remaining in the hands of the representative or under the control of the court. (without regarding any debts of superior dignity, for which there may have been no such reservation,) the amount of such claim or a proportion thereof equal to what shall have been paid to other creditors of the same class, if there be enough remaining to pay the same or such proportion, but the former dividend shall not be disturbed."

Surplus dividends,
how applied, &c.

"29. When at the time of any dividend the whole assets are not distributed, or where further assets afterwards come to the hands of the personal representative, if after paying such proportion as is mentioned in the preceding section, or any claim allowed subsequent to such dividend, there remain a surplus, it shall be divided among all the creditors who shall have proved debts and demands against the decedent's estate in the order and proportion in which they may be entitled."

When distribution
to be made; refund-
ing bond; when re-
quired.

"30. A personal representative shall not be compelled to pay any legacy given by the will or make distribution of the estate of his decedent, until after a year from the date of the order conferring authority on his first executor or administrator of such decedent; and except where it is otherwise specially provided, he shall not then be compelled to make such payment or distribution until the legatee or distributee shall give him a bond, executed by himself or some other person, with sufficient security, conditioned to refund a due proportion of any debts

or demands which may afterwards appear against the decedent, and of the costs attending their recovery. Such bond shall be filed in the clerk's office of the court which may have decreed such payment or distribution or in which the accounts of such representative may be recorded." When bond filed.

"31. If any personal representative shall pay any legacy given by the will, or distribute any of the estate of his decedent, and there be filed in the said clerk's office a proper refunding bond for what is so paid or distributed, with a security therein sufficient at the time of taking it, such personal representative shall not on account of what is so paid or distributed, be personally liable for any debt or demand against the decedent whether it be of record or not, unless within one year from his qualification, or before such payment or distribution he shall have had notice of such debt or demand. But if any creditor of the decedent thereafter establish his debt or demand by judgment or decree therefor, or by its being allowed in a commissioner's report which is confirmed, a suit may be maintained on such refunding bond in the name of the obligee or his personal representative, for the benefit of such creditor and a recovery shall be had thereon to the same extent that would have been had if the said obligee or his personal representative had satisfied such debt or demand." When fiduciary protected by such bond. Right of creditor to sue on bond.

"32. When a report of the accounts of any personal representative and of the debts and demands against his decedent's estate shall have been filed in the office of a court under this chapter, the said court after two years from the qualification of such personal representative, may, on the motion of a legatee or distributee of his decedent make an order for the creditors of such decedent to show cause on some day to be named in the order, against the payment and delivery of the estate of the decedent to his Proceedings by legatee or distributee to compel creditors to show cause against distribution. How order published and posted.

What order court may make for distribution.

Liability of legatee &c., to refund in such cases.

How report of commissioner may be removed to circuit court.

Duty of clerk on such removal.

How case proceeded in by circuit court.

Where report recorded and filed.

How costs paid.

legatees or distributees; a copy of which order shall be published once a week for four weeks in one or more newspapers as the court may direct, and posted at the door of the court house of the county on the second Monday of two successive months. On or after the day named in the order, the court may order the payment and delivery to the legatees or distributees of the whole or a part of the money and other estate not before distributed, with or without a refunding bond, as the court may prescribe. But every legatee or distributee, to whom any such delivery or payment is made, and his representatives may, in a suit brought against him within five years afterwards, be adjudged to refund a due proportion of any debts or demands appearing against the decedent and of the costs attending their recovery."

"33. Any county court to which a report may be made under this chapter, and on the motion of any person interested and for good cause shown, shall order it to be removed to the circuit court having jurisdiction over the county. If any county court refuse, the circuit court, or the judge thereof in vacation may order such removal."

"34. When a report is so ordered to be removed, the clerk of the county court shall deliver to the clerk of the circuit court the said report with the vouchers or evidence returned therewith or exceptions taken thereto, and copies of all orders made, and a statement of the costs incurred by any party therein. Whereupon the case shall be proceeded in by the circuit court as if it had been originally cognizable and the previous proceedings had therein, but the report instead of being recorded in the circuit court, shall be recorded in the county court, after which it shall be returned to and filed in the office of the circuit court. The costs attending such removal shall be paid as the circuit court may order."

2. All acts or parts of acts, inconsistent with this ^{inconsistent acts} act are hereby repealed. ^{repealed.}

CHAPTER CCXXXV.

AN ACT for the relief of John H. Martin, of Harrison county.

Passed December 29, 1873.

WHEREAS, John H. Martin, a member of the board of education of Clay township, in Harrison ^{Preamble.} county, by direction of said board of education, placed in the hands of Thomas Harbert, a constable of said township, certain school taxes due from tax payers in said township, without taking any bond from said Harbert, believing that his bond as constable was sufficient; and

WHEREAS, It has been found that said bond is insufficient, that said Harbert is insolvent and that his sureties on said bond are not liable for the taxes due said district collected by him and which he has failed to pay over; and,

WHEREAS, The committee appointed by the state superintendent of free schools to settle with the several boards of education in Harrison county, charged the said John H. Martin with the amount collected and not accounted for by said Harbert, as well as the delinquent school taxes for said township, amounting in the aggregate to the sum of five hundred and twenty-seven dollars and sixty-two cents, notwithstanding said sum or any part thereof did not enure to the benefit of said Martin; and

WHEREAS, Judgment has been obtained in the circuit court of Harrison county against said Martin, at the instance of said committee, for the sum of four

hundred and thirty-seven dollars and sixty-two cents ;
and,

WHEREAS, A large number of the tax payers of
said district ask that said Martin be released from
the payment of said judgment ; therefore,

Be it enacted by the Legislature of West Virginia :

Judgment suspended
until March,
1875; conditions of.

1. That upon John H. Martin securing to the satisfaction of the board of education of the district of Clay in the county of Harrison, the payment of a judgment rendered at the last term of the circuit court of Harrison county in favor of said board for the sum of \$437.62, if payment thereof be ultimately required, all proceedings upon said judgment shall be suspended until the first day of March, 1875. But such suspension shall in nowise operate as a discharge of the judgment lien upon the lands of the said Martin.

But not to operate
as a discharge of
judgment lien.

CHAPTER CCXXXVI.

AN ACT to repeal an act entitled "An act to provide for free education in Bethany College," approved November 17, 1873.

Passed December 29, 1873.

Be it enacted by the Legislature of West Virginia :

Act providing for
free education in
Bethany college
repealed.

1. That the act entitled "An act to provide for free education in Bethany College," approved November 17, 1873, be and the same is hereby repealed.

Commencement.

2. This act shall take effect and be in force from and after its passage.

JOINT RESOLUTIONS.

[No. 1.]

Joint Resolution concerning the opening and counting of the votes of the election held August 22, 1872, for state officers.

Resolved by the Legislature of West Virginia :

That a joint committee be appointed consisting of two members of the Senate and three members of the House of Delegates, to prepare the necessary rules and regulations for the government of the two Houses of the Legislature when the Senate shall assemble in the Hall of the House of Delegates for the purpose of being present at the opening and publishing of the election held on the twenty-second day of August last, for Governor, State Superintendent of Free Schools, Auditor, Treasurer and Attorney General.

ADOPTED, November 19, 1872.

[No. 2.]

Joint Resolution appointing a joint committee to wait upon the Governor.

Resolved by the Legislature of West Virginia :

That a joint committee of three on the part of the House and two on the part of the Senate be appointed, to wait on the Governor and

and inform him that the two houses are organized and ready to receive any communication he may have to make.

ADOPTED November 21, 1872.

[No. 3.]

Joint Resolution, raising a joint committee to revise the joint rules of the Senate and House of Delegates

Resolved by the Legislature of West Virginia :

That a joint committee consisting of two on the part of the Senate and three on the part of the House of Delegates, be appointed to revise the joint rules of the two branches.

ADOPTED November 25, 1872.

[No. 4.]

Joint Resolution amending the rules adopted November 19, 1872, concerning the counting of the votes for State officers at the August election, 1872.

Resolved by the Legislature of West Virginia :

That the rules adopted November 19, 1872 under the joint resolution entitled, "concerning the opening and counting of the votes of the election held August 22, 1872 for State officers" be so amended as to strike therefrom the words "proceeding by counties in alphabetical order" and to insert after the words "to be entered upon the journal of the House" the words "in alphabetical order."

ADOPTED November 20, 1872.

[No. 5.]

Joint Resolution in relation to the printing and binding

of the journal of each House, bills and other documents.

Resolved by the Legislature of West Virginia :

That there be printed of the journal of each House, and other documents ordered to be printed by either House, six hundred copies unless otherwise directed by the House ordering the printing, three hundred copies of which to be preserved by the printer for binding.

ADOPTED December 2, 1872.

[No. 6.]

Joint Resolution appointing a joint committee to examine the condition of the penitentiary.

Resolved by the Legislature of West Virginia :

That a joint committee consisting of two members of the Senate and three of the House of Delegates, be appointed to examine the condition of the penitentiary, and report thereon at the first meeting of the Legislature after the first day of January 1873, or at an early day thereafter.

ADOPTED December 3, 1873.

[No. 7.]

Joint Resolution recognizing the death of the Hon. Horace Greeley, as a national calamity.

WHEREAS :

The people of West Virginia in common with the people of the whole United States have heard with profound regret of the death of the Hon. Horace Greeley of New York ; and

WHEREAS

In the death of this distinguished man our entire country suffers

the loss of one whose devotion has been lifelong to the cause of morality and to his country and to his fellow man. Therefore,

Resolved by the legislature of West Virginia :

That together with the citizens of our common country, we deplore the death of the Hon. Horace Greeley, and recognize in his loss a national calamity.

ADOPTED December 10, 1872.

[8]

Joint Resolution to furnish certain committees with the Code of West Virginia.

Resolved by the Legislature of West Virginia :

That the Secretary of State furnish the committees on the judiciary, finance counties, and municipal corporations, and on roads, in each house of the legislature, such numbers of the code of West Virginia as may be required for the convenient and expeditious discharge of the duties of said committees, and which may be by said committees, cut up, injured or destroyed, if deemed necessary, to facilitate the discharge of said duties.

Adopted Dec. 11, 1872.

[No. 9.]

Joint Resolution appointing a joint committee to examine the condition of the Hospital for the Insane at Weston.

Resolved by the Legislature of West Virginia :

That a joint committee consisting of two member of the Senate, and three members of the House of Delegates, be appointed to examine the condition of the West Virginia hospital for the insane at Weston, and report at the first meeting of the legislature, after the first day of January, 1873, or at an early day thereafter; and that the said committee specially and particularly report.

1st. The mode of purchasing supplies.

JOINT RESOLUTIONS.

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2nd. The number of officers, and the salaries paid to each, and the services they perform.

8d. The number of employees, the compensation paid to each, and the duties they perform.

4th. And whether any plan can be adopted for completing the building at a less expense than the present plan, without deranging the proportions of the building and its symmetrical appearance.

5th. That they report such other matters deemed pertinent and proper.

ADOPTED December 20, 1872.

[No. 10.]

Joint Resolution providing for the transfer of certain rights and franchises of the State of West Virginia to the United States.

WHEREAS, The Congress of the United States recently made an appropriation for a survey, to ascertain whether it was practicable to construct a continuous water line through this State, to connect the waters of the Mississippi valley with the Chesapeake Bay, and the engineers employed for that purpose have shown that such a line is practicable; and

WHEREAS, The State of West Virginia regards the said line as a work of National importance, and is anxious to afford every facility for the construction of the same:

Therefore be it Resolved by the Legislature of West Virginia:

1. That the State of West Virginia hereby agrees to transfer all the rights, privileges and franchises, now owned or possessed by the State in the Kanawha River Improvement, and the chutes, dams, wing-dams, channels, and all other work heretofore done in the Kanawha river, together with jurisdiction in and over the Kanawha river, from its mouth to the mouth of Gauley river, and over the New river from the mouth of Gauley to the mouth of Greenbrier river, and over the Greenbrier river from its mouth to the mouth of Howard and Anthony creeks, and from the mouth of said creeks to the State line, and also the right, power and franchise to construct, maintain and operate a good and substantial through water line from the mouth of the Kanawha river to the Chesapeake Bay, so far as the said water line shall pass through and be located in this State: *Pro-*

vided, That the rights, privileges and franchises herein mentioned, shall never be so exercised as to affect or impair any right now vested in the Chesapeake and Ohio Railroad Company, by or under the laws of this State.

2. The board of public works is hereby authorized to appoint nine commissioners on the part of the State, one to be chosen from each judicial circuit, any five or more of whom may act, to confer and negotiate with any commissioners or persons, who may be authorized by law to act for, and on behalf of the United States, in regard to a transfer to the United States, of the said rights, privileges and franchises.

Three-fourths of the said commissioners, at least, shall consent to any contract or agreement that may be proposed, touching the said transfer.

3. That the said commissioners shall, as soon as a contract is proposed to them, which they, or three-fourths of them, may deem acceptable and just, transmit it to the Governor of this State, who shall submit the same to the Legislature for their action if it be in session at the time, and if the Legislature be not then in session he shall convene it as speedily as possible for that purpose.

4. That the State of Virginia be respectfully requested to take concurrent action in the matter referred to in the foregoing resolutions, and that a copy of the same be sent by the Governor of this State to the Governor of Virginia with the request that he lay them before the Legislature of that State.

5. That a copy of these resolutions be sent to each of the Senators and Representatives in Congress from this State, and they be requested to lay the same before Congress; and to the the Governors of the following States: Virginia, Maryland, Ohio, Kentucky, Tennessee, Indiana, Illinois, Missouri, Arkansas, Kansas, Iowa, Wisconsin, Minnesota, Nebraska, Pennsylvania and North Carolina.

ADOPTED December 21, 1872.

[11]

Joint Resolution proposing a recess of the Legislature of this State.

Resolved by the Legislature of West Virginia :

That when the legislature adjourn on the 21st instant, it do so to meet on the 10th day of January, 1873.

Adopted Dec. 19, 1872.

[12]

Joint resolution requiring the Public Printer to furnish copies of bills of a public nature as soon as possible.

Resolved by the Legislature of West Virginia :

That the public printer, as soon as bills of a public nature become laws, print them, and furnish 500 extra copies thereof as they pass, before the 21st day of December, 1872, for the use of the two houses of the legislature.

ADOPTED December 21, 1872.

[No. 13.]

Joint Resolution raising a joint committee to inquire as to the expediency of reducing the expenses attending the different departments of the government.

Resolved by the Legislature of West Virginia :

That a joint committee, to consist of three on the part of the Senate and five on the part of the House of Delegates, be appointed and instructed to inquire and report to their respective Houses, whether the expenses attending the different departments of the government cannot be reduced without detriment to the public service.

ADOPTED January 14, 1873.

[No. 14.]

Joint Resolution requiring and instructing our representatives in Congress to favor the passage of a bill to re-sell the water privileges at Harper's Ferry.

WHEREAS, At a public sale, under an act of Congress, held in the town of Harper's Ferry, county of Jefferson, West Virginia, in the latter part of November, 1869, of the water privileges at the said town owned by the United States, the said water privileges were bid in by a Mr. T. C. Adams, giving bonds and security at one and two years, respectively, to secure payments; and,

WHEREAS, The said bonds having matured and the said T. C. Adams having failed to comply with the agreement named; therefore, Be it resolved by the Legislature of West Virginia :

That as a means of affording relief to the citizens of said town and surrounding country, as well as to advance the interests of the State, our Senators in Congress be instructed and our Representatives be requested to favor the passage of a bill authorizing the Secretary of War to re-sell the same.

Resolved, further, That a copy of the foregoing preamble and resolution be transmitted by His Excellency, the Governor of this State, to the President of the Senate of the United States, and to the Speaker of the House of Representatives, and to our Senators and Representatives in Congress.

ADOPTED January 17, 1873.

[No. 15.]

Joint Resolution prescribing the manner in which bills presented to the Governor for his approval shall be disposed of.

Resolved by the Legislature of West Virginia :

1. Every bill disapproved by the Governor shall be returned by him to the house in which it originated, with his objections thereto unless the Legislature shall by their adjournment present its return, in which case it shall be filed in the office of the Secretary of State within five days after said adjournment.

2. Every bill approved by the Governor shall within five days after it is presented to him, be filed in the office of the Secretary of State, and the fact of said approval commuted by the Governor to the house in which said bill originated : *Provided*, that bills heretofore approved

by the Governor shall be disposed of as aforesaid within five days after the passage of this resolution.

3. Every bill which shall be neither approved nor disapproved by the Governor, shall immediately after the expiration of five days from the time it is presented to him, be filed in the office of the Secretary of State, who shall forthwith engross thereon a certificate to the following effect: "I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the house of the Legislature in which it originated within the time prescribed by the Constitution of the State, has become a law without his approval;" and shall date and sign the same.

4. Upon each bill returned to either house of the Legislature with the objections of the Governor, the clerks of the Senate and House of Delegates shall engross the action of their respective Houses, on the reconsideration and passage of said bill, and sign the same.

ADOPTED January 21, 1873.

[No. 16.]

Joint Resolution requiring the Clerk of House of the Delegates to furnish certificates to the State officers.

Resolved by the Legislature of West Virginia:

That the Clerk of the House of Delegates be and is hereby authorized and required to prepare certificates of election for the several State executive officers, and to furnish such certificates, properly signed by the Speaker of the House of Delegates, and attested by the Clerk thereof, to each of the said officers declared elected.

ADOPTED December 20, 1872.

[No. 17.]

Joint Resolution requiring certain duties of the Clerk of the House of Delegates and Public Printer in relation to the acts of the Legislature."

WHEREAS, It is very important that the acts of the Legislature be

placed before the people of the State with as little delay as possible, and

WHEREAS, By printing the acts as is now done without side notes, involves the cost of double composition, work and paper to prepare the said acts for binding.

Resolved by the Legislature of West Virginia :

That the Clerk of the House of Delegates be required to furnish the side notes, to the acts as they are printed, and that the public printer be required to print four thousand copies of the acts; fifteen hundred of said copies to be furnished the members of the Legislature for distribution and two thousand five hundred copies to be retained by him for binding: That of the number allotted to be distributed among the members two copies of each act be sent directly to the clerks of the county and circuit courts of each county respectively by the public printer *Provided*, That acts of a public nature shall be first prepared and printed as above provided for.

ADOPTED February 5, 1873.

[No. 18.]

Joint Reselution in relation to certain land tax books of the county of Hampshire.

WHEREAS, during the late war, the land tax books of the assessors or commissioners of the revenue for the county of Hampshire, in this State, were destroyed, to the serious inconvenience of and considerable vexation and expense to the people of said county; and

WHEREAS, copies of said books from the year 1861, are filed in the office of the Auditor of the State of Virginia, which are believed to be of little value to said State of Virginia; therefore,

Be it resolved by the Legislature of West Virginia :

That the Legislature of the State of Virginia be, and is hereby, requested to authorize and direct the said Auditor to forward the copies of said books now on file in his office to the clerk of the county court of said Hampshire county, to be preserved among the records of his office. And the Governor of this State is requested to at once communicate this resolution to the Governor and Legislature of Virginia:

ADOPTED February 6, 1873.

[No. 19.]

Joint Resolution directing the Secretary of State to furnish the Clerk of the House of Delegates the acts placed in his custody.

WHEREAS, by a joint resolution of the Legislature, passed at the present session, certain acts of this Legislature are required to be deposited in the office of the Secretary of State; and

WHEREAS, by a subsequent joint resolution passed by the Legislature the Clerk of the House of Delegates was required to furnish to the public printer the necessary side notes for the acts, directed to be published immediately after their passage; now, therefore,

Be it resolved by the Legislature of West Virginia;

The Secretary of State is hereby directed to furnish to the Clerk of the House of Delegates the acts placed in his custody as aforesaid.

ADOPTED February 11, 1873.

[No. 20.]

Joint Resolution instructing the Senators and Representatives of this State in Congress, to devote themselves to a modification of the act of Congress, approved February 14, 1871, in relation to pensions.

Resolved by the Legislature of West Virginia:

That our Senators be instructed, and our Representatives in the Congress of the United States requested to use their best efforts to have the act of Congress approved Feb. 14, 1871, granting pensions to soldiers, and sailors of the war of 1812 and the widows of deceased soldiers so modified that all the soldiers and sailors who periled their lives in that great struggle to defend and maintain the honor and rights of the United States, shall have the benefit of said act.

Resolved, That a copy of the foregoing resolution be transmitted by the Governor of this State to each of said Senators and Representa-

tives with the request that the same be laid before the Senate and House of Representatives of the Congress of the United States.

ADOPTED February 18, 1873.

[No. 21.]

Joint Resolution providing for the appointment of a joint committee to visit the Salt Sulphur Springs, in the county of Monroe, with reference to the purchase of the same by the State.

Be it resolved by the Legislature of West Virginia :

That a committee consisting of three members of the House of Delegates and two members of the Senate be appointed to visit the Salt Sulphur Springs, in the county of Monroe, and that they ascertain and report to the Legislature;

1. Whether the buildings upon said property are suitable for the care and custody of insane persons, and what expense in addition to the purchase of said property will be necessary in order to render them a fit and proper asylum for insane persons.

2. That they inquire and report whether the locality of said Springs be healthy and salubrious or otherwise.

3. That they inquire into and report the price of said property and the terms of payment therefor.

4. That they inquire into and report upon the title of said property.

5. That they inquire into and report upon any matter in connection therewith that may be deemed expedient.

6. That said committee be allowed their necessary expenses incurred in going to and returning from said property.

ADOPTED February 21, 1873.

[No. 22.]

Joint Resolution authorizing the publication of the records

and opinions of the special courts in the contested election cases of George Loomis vs. James M. Jackson, and Thomas W. Harrison vs. Charles S. Lewis."

Resolved by the Legislature of West Virginia :

1. That the Governor be requested to furnish to the reporter of the Supreme Court of Appeals, the records and the opinions of the special courts in the contested election cases of George Loomis vs. James M. Jackson, and Thomas W. Harrison vs. Charles S. Lewis.

2. That said reporter prepare the same for publication, and append them in the sixth volume of the West Virginia Reports of cases decided by the Supreme Court of Appeals.

ADOPTED February 26, 1873.

[No. 23.]

Joint Resolution providing for the inauguration of the Governor.

Resolved by the Legislature of West Virginia :

That a committee of three on the part of the Senate and five on the part of the House, be appointed to make the necessary arrangements for the inauguration of the Governor on the fourth day of March, inst.

ADOPTED March 3, 1873.

[No. 24.]

Joint Resolution relating to copies of certain land tax books destroyed during the late war.

WHEREAS, It is represented that the land tax books of many counties in this State were destroyed during the late war between the Government of the United States and a part of the people thereof, or by casualties since the war, to the great damage and inconvenience of many citizens of the State ; and,

WHEREAS, It is suggested that copies of the same are now on file in the Auditor's office at Richmond, in the State of Virginia, which said copies do not necessarily form a part of the records of said office, and which can be procured without any expense to this State, other than the costs of transportation ; therefore, be it

Resolved by the Legislature of West Virginia :

That His Excellency, the Governor of the State of Virginia be, and he is hereby, requested to recommend to the Legislature of said State of Virginia, such action as will authorize the said land tax books to be withdrawn from the said office, at Richmond, and deposited in the Auditor's office of this State.

That His Excellency, the Governor of this State, is hereby requested to transmit a copy of this resolution to the Governor of Virginia.

ADOPTED April 1, 1873.

[No. 25.]

Joint Resolution fixing a time for an adjourned session.

Resolved by the Legislature of West Virginia :

That when the Senate and House of Delegates adjourn at 11 o'clock on the 7th day of this month (April,) the adjournment shall be to meet again at the seat of Government on the 20th day of October next; and that members shall neither receive per diem allowance during the recess, nor mileage.

ADOPTED April 3, 1873.

[No. 26.]

Joint Resolution relating to the acts and journals of the Legislature.

Resolved by the Legislature of West Virginia :

That after the recess to be taken on the 7th instant, the Pub-

lic Printer transmit by mail a copy of the acts to each Judge of this State, President of a county court, Prosecuting Attorney, and clerk of a court, and the residue of the fifteen hundred printed for circulation equally to the Senators and member of the House of Delegates; and that the binding of the acts and journals be postponed until after the adjourned session.

ADOPTED April 5, 1873.

[No. 27.]

Joint Resolution providing for the temporary printing and stationery for the Senate and House of Delegates.

Resolved by the Legislature of West Virginia :

That the Clerk of the Senate, and Clerk of the House of Delegates be instructed to procure for the temporary use of their respective Legislative bodies, stationery, and the printing, folding and stitching of the journals and bills, and such other printing as may be ordered by the Senate or House of Delegates, until a contract therefor shall be made by the commissioners of public printing, and approved by the Governor, in pursuance of chapter 79, entitled "An act to provide for the public printing and binding, and supplying stationery and printing paper for the State use; approved April 1st, 1873. The compensation for the stationery and work done for the Senate and House of Delegates shall, when such stationery is delivered, and such work is done, be certified by the clerks of the Senate and House of Delegates respectively to the Superintendent of Printing, and shall be paid for accordingly to said chapter 79, out of the appropriation contained in the 34th section of chapter 111, approved April 7th 1873, when verified as in said section is required. *Provided*, That no higher rates shall be paid for said stationery and printing than the minimum rates contained in the competing proposals received, during the recess of the Legislature, by the Commissioners of Public Printing on which they concluded a contract with Henry S. Walker, which contract the Governor disapproved.

ADOPTED October 20, 1873.

[No. 28.]

Joint Resolution providing for the appointment of a joint committee to receive and accompany the committee on transportation of the United States Senate, from the head of navigation on the Kanawha river to Charleston.

WHEREAS, The Committee on Transportation of the Senate of the United States are now examining the line of the James River and Kanawha Canal with a view of making a report to the United States Senate on the expediency of completing said work at the expense of the general government and are expected at this place on the evening of the 24th instant, therefore.

Resolved by the Legislature of West Virginia :

That a joint committee of seven consisting of three members from the Senate to be appointed by the President thereof and four members from the House to be appointed by the Speaker thereof, do proceed to the head of navigation on the Kanawha river and receive said committee and accompany them to this place.

ADOPTED October 22, 1873.

[No. 29.]

Joint Resolution directing a file of the Journal, bills and all other matter printed for the use of each House to be furnished to the State officers.

Resolved by the Legislature of West Virginia :

That the Sergeant-at-Arms of the Senate and House of Delegates be instructed to furnish to the Governor, Auditor, Treasurer, Secretary of State and Superintendent of Free Schools, a full and complete file of the journals, bills and all other matter printed by order, and for the use of each House from and including the twentieth day of October, 1873, such printed matter to be delivered to the officers above mentioned as soon as it may be received from the hands of the printer.

ADOPTED October 30, 1873.

[No. 30.]

Joint Resolution requiring the clerks of the Senate and House of Delegates to certify certain accounts for stationery and printing.

WHEREAS, The clerks of the Senate and House of Delegates having reported that, under a joint resolution adopted the 20th day of October, 1873, providing for temporarily printing the journals, bills, and other matters ordered by the two Houses of the Legislature, that they had engaged Henry S. Walker to furnish said printing at rates provided for in said resolution; and

WHEREAS, The said Henry S. Walker has proceeded with said work, and purchased paper to supply the work for temporary purposes, and his accounts therefor, although verified by the said Walker, and certified by the said clerks, yet the Secretary of State, and *ex-officio* superintendent of public printing, has declined to certify the same for payment; and

WHEREAS, The said Henry S. Walker cannot be expected to furnish the stationery and execute the printing necessary for the Legislature to proceed with its current business, without being paid therefor; and in order to afford temporary relief, and to enable the Legislature to proceed with its important business; therefore,

Resolved by the Legislature of West Virginia:

That until the stationery, printing paper, printing, folding, stitching and binding ordered by the Legislature, or needed in the Executive departments, shall be supplied by contract, under the thirty-fourth section of article six of the Constitution, that the clerk of the Senate and clerk of the House of Delegates procure for the temporary use of their respective legislative bodies, stationery, and the printing, folding, stitching and binding of the journals, bills and acts, and such other printing as may be ordered by both or either of said Houses. The compensation therefor, after being furnished, and the accounts for the same having been verified by the affidavit for the claimant, shall be certified jointly by the said clerks to the Auditor, who shall issue his warrant therefor on the Treasurer, payable out of the fund appropriated for printing and other purposes, by the thirty-fourth section of the act approved the 7th of April, 1873, entitled "An act making appropriations of public money to pay general charges upon the treasury." And that the Executive officers shall, in like manner, procure the necessary stationery and printing for their respective departments for temporary purposes, until the same shall be furnished under contract as aforesaid. The accounts therefor shall, after being

verified as aforesaid, be certified by them respectively, and paid out of the money appropriated as aforesaid. Except that the printing, binding and stationery ordered by the State Superintendent of Free Schools, shall be paid out of the general school fund: *Provided*, That no higher rates shall be paid for said stationery, printing, folding, stitching and binding than the minimum rates contained in the competing proposals received during the recess of the Legislature, by the commissioners of public printing, on which they concluded a contract with H. S. Walker, which contract the Governor disapproved.

Resolved, further, That the said clerks certify the accounts for printing and stationery furnished under the joint resolution passed on the twentieth of October, and that such stationery and printing be paid for as provided for in this resolution; and that said resolution be rescinded.

ADOPTED October 31, 1873.

[No. 31.]

Joint Resolution requesting our Senators and Representatives in Congress to ask the passage of an act providing for a session of the United States District Court at Martinsburg.

Resolved by the Legislature of West Virginia :

1. That our Senators and Representatives in the Congress of the United States be, and they are requested to ask the passage by that body of an act providing for the holding of an annual session of the District Court of the District of West Virginia, at Martinsburg, in the county of Berkeley.

2. That the Governor be requested to transmit a copy of this joint resolution to each of our Senators and Representatives in Congress.

ADOPTED November 7, 1873.

[No. 32.]

Joint Resolution in relation to the belligerent rights of Cuba.

WHEREAS, A protracted and cruel war is now raging between the

people of the neighboring island of Cuba and the Government of Spain; the character of which ought not to pass unnoticed by a christian people; therefore,

Resolved by the Legislature of West Virginia :

That in our opinion the brave and patriotic Cubans struggling for their independence are intitled to belligerent rights, and that the Government of the United States ought to recognize such rights, and so far as a friendly power can, lessen the horrors of a savage war.

ADOPTED November 19, 1873.

[No. 33]

Joint Resolution for the purchase and delivery of certain books.

Resolved by the Legislature of West Virginia :

That the Librarian of the State of West Virginia be, and he is hereby authorized to contract with any person, for the purchase and delivery of the books contained in the following list marked A, and at the prices in said list given. And that he be authorized to put in, in part payment the 57 duplicate volumes of reports named in the list of duplicate volumes hereto attached, marked list B, at the price of \$165.00.

LIST A.

Clifford's U. S. Circuit court Reports, vols. 1 and 2, 3 and 13 wanting.....	\$13 00
Blatchford, U. S. Circuit Court Reports, vols. 4, 5, 6, 7, 8, 9, wanting.....	39 00
Wallace Sr., 1 vol. Circuit Court Reports, wanting.....	6 50
Peters, 1 vol Circuit Court Reports, wanting.....	6 00
Wallace, vols. 2 and 3 Circuit Court Reports, wanting.....	14 00
Davies Circuit Court Reports, 1 wanting.....	6 50
Howard's U. S. S. S. Court Reports, vols. 22, 23, 24, wanting.....	16 50
Wallace, U. S. S. S. Court Reports vols. 14, 15, wanting.....	11 00
U S Dig. 25 to 32, inclusive, wanting.....	36 00
Abbott's National Digest, 4 and 5 wanting.....	11 00
Kentucky Reports, Marshall, J. J. 2 and 3 wanting.....	9 00
Bush, 1 to 6 inclusive wanting.....	36 00
Iowa, (Morris) 1 vol wanting.....	5 00
Iowa, 23 wanting.....	5 00
Georgia Reports, vols. 26 27, 28, and 29 wanting.....	29 00
Alabama, 30, 31, 32, 33, 34, 35, wanting.....	49 00
California Reports, vols. 1, 2, 13, 14, 15, 16, 17, 18, 19, 20, 33, 34 wanting.....	96 00
Michigan Reports, vol. 14 and 15, wanting.....	10 00
Minnesota Reports, vol. 1, 3 and 4 wanting.....	21 00
Ohio Reports vol. 8 wanting.....	3 00
South Carolina Law Reports, Hill, vols. 1, 2, and 3 wanting.....	13 50
S. C. Equity (Rich.) 1, wanting.....	5 50
Maine Reports, vol 1, Greenleaf wanting.....	7 00

\$451 00

LIST B.

DUPLICATES IN THE LIBRARY.

Pennsylvania, 42 to 50, inclusive, 9 vols.....	9
California, vols 22 to 32, inclusive.....	11
Kentucky, Doss, 7, 8 and 9.....	3
Minnesota, vol 7.....	1
Duval's Ky., Vol 1.....	1
Nevada, 1, 2, 3, 4, 5 and 6.....	6
Ohio State Reports, 11, 12, 13, 14, and 15.....	5
Oregon, vol 2.....	1
Arkansas, vol 6 and 7, Rep.....	2
Indiana (Carter) Rep.....	1
Maine Reports, vols 49, 50, 51.....	3
New Hampshire Reports, vols 16 17, 18 and 45.....	4
	57

ADOPTED November 20, 1873.

[No. 34.]

Joint Resolution providing for a distribution of the Acts.

Resolved by the Legislature of West Virginia :

That such acts of the Legislature as are printed, from time to time, be disposed of and distributed in the manner prescribed by Joint Resolution No. 29, adopted before the late recess, except that the copies for the use of the members of the Legislature be delivered to them in person, instead of being sent by mail, until the adjournment, and thereafter they shall be sent by mail.

ADOPTED December 2, 1873.

[No. 35.]

Joint Resolution authorizing the clerks to examine certain vouchers for printing for the current use of the Legislature.

Resolved by the Legislature of West Virginia :

That the clerk of the Senate and the clerk of the House of Delegates are hereby authorized and directed to thoroughly examine every voucher presented to them for their certificate, and if the same be

found to be in proper form and correct, they shall jointly certify the same to the Auditor for payment.

ADOPTED December 2, 1873.

[No. 36.]

Joint Resolution requiring the Secretary of State to furnish certain books and public documents to certain law libraries in the State.

Resolved by the Legislature of West Virginia :

That the Secretary of State be authorized to furnish to George O Davenport, for the Ohio County Law Library, one copy of each of the reports, statutes, journals and public documents that have been printed for the State; and that he furnish to R. Hume Butcher one copy of each of said books and documents for the Law Library Association of Jefferson county; and that he also furnish one copy of each of said books and documents to Wm. Price, for the Library of the West Virginia University.

ADOPTED December 6, 1873.

[No. 37.]

Joint Resolution providing for the printing of the reports of the public institutions of the State.

Resolved by the Legislature of West Virginia :

That the Governor be, and he is hereby authorized to have printed one thousand copies of the reports of each of the public institutions of the State, except those reports which may have already been printed, and one thousand extra copies of the rules for the government of the West Virginia University: *Provided*, That such printing shall not be at a higher rate than the printing as now done for the use of the Legislature.

ADOPTED December 8, 1873.

[No. 38.]

Joint Resolution relating to the indexes to the Senate and House Journals, and the Acts of the present Legislature.

Resolved by the Legislature of West Virginia :

That the clerk of the Senate and the clerk of the House of Delegates be allowed pay for fifteen days in addition to the time prescribed in section sixteen of chapter twelve of the Code, making in all twenty-five days each, for preparing the indexes to the acts and journals of the present Legislature.

ADOPTED December 9, 1873.

[No. 39.]

Joint Resolution requesting Hon H. M. Mathews to ascertain the number of insane persons in the State; and also certain information in relation to the Salt Sulphur Springs.

Resolved by the Legislature of West Virginia :

1. That Hon. H. M. Mathews be requested to ascertain the whole number of insane persons in the State, whether kept in the Hospital at Weston, in the jails of the State, or private houses.

2. That he examine the title of the Salt Sulphur Springs property in Monroe county, and ascertain at what price said property can be purchased, and also whether a portion of said property can be purchased, including the Springs building with a sufficient quantity of land attached thereto, to furnish wood and pasturage to an asylum, and the price and terms of such part of the property.

3. That he make full report of the matters contained in the foregoing resolutions to the next session of the Legislature.

ADOPTED December 10, 1873.

[No. 40.]

Joint Resolution authorizing the Governor to institute suits against other Public Printers beside Henry S. Walker, if in his opinion other Public Printers have charged more than was right and proper, and placing the civil contingent fund at his disposal for that purpose and instructing the Attorney General to assist in the prosecution of said suits.

WEHREAS, A committee for the investigation of the Public Printing accounts was appointed by the Legislature of 1872, of which committee the Governor was a member, and

WHEREAS, It appears from the report of said committee that they came to the conclusion, whether rightfully or wrongfully is to be seen, that several persons who had previously done the business of Public Printing had improperly charged therefor, and were due the State money, and

WHEREAS, The Governor has asked the Legislature for authority to institute a suit against Henry S. Walker, one of the accused public printing debtors, and has omitted the others, and

WHEREAS, A bill has been introduced into the Legislature authorizing a suit against the said Henry S. Walker, omitting the others in the same predicament, as the Governor did in his request, now therefore Be it resolved by the Legislature of West Virginia:

That the Governor be and he is hereby authorized to bring suit against all former public printers, who in his opinion, have charged for their work than more was right and proper, and are thus due the State money, and to carry on such suits the Governor is authorized to draw from the civil contingent fund the necessary money, and that the Attorney General be, and he is hereby instructed to assist in the prosecution of said suits.

ADOPTED December 12, 1873.

[No. 41.]

Joint Resolution extending the time for final adjournment.

Resolved by the Legislature of West Virginia:

That the joint resolution providing that]_when]the two Houses ad-

journ on the 15th instant, they adjourn *sine die*, be rescinded, and that when the two Houses adjourn on the twenty-second instant, they adjourn *sine die*; and that the hour of adjournment on that day be 9 o'clock A. M.

ADOPTED December 12, 1873.

[No. 42.]

Joint Resolution instructing our Senators and requesting our Representatives in Congress to use their best efforts to secure for the State of West Virginia an appropriation of the public lands of the United States, to be devoted to the support and continuation of the free schools of this State.

Resolved by the Legislature of West Virginia :

1. That our Senators be instructed and our Representatives in the Congress of the United States requested to introduce and support a bill for the sale of the public lands, and for the distribution of the proceeds thereof among the several States for educational purposes.

2. That his Excellency, the Governor of this State, do forward to each of said Senators and Representatives a copy of these resolutions to be laid before the Senate and House of Representatives of the Congress of the United States.

ADOPTED December 16, 1873.

[No. 43.]

Joint Resolution to pay John M. Greer, Sheriff of Jackson county, for services in conveying a lunatic to Wise county, Virginia.

Resolved by the Legislature of West Virginia :

That the Auditor be and he is hereby authorized to pay John M!

Greer, Sheriff of Jackson county, out of the fund appropriated for expenses of lunatics in jails, the amount due him from the State for expenses and charges for carrying William Skene, a lunatic, citizen of Wise county, Virginia, arrested in Jackson county, from the jail of said Jackson county, to said Wise county Virginia, in October, 1873, pursuant to an order of the circuit court of said Jackson county: *Provided*, the rate for mileage and expenses herein authorized, shall not exceed the rate for charges and expenses now authorized by law for carrying lunatics to the Hospital for the Insane.

ADOPTED December 16, 1873.

[No. 44.]

Joint Resolution requiring the Secretary of State to furnish to the United States Congressional Law Library, a copy of the laws of this State, together with certain journals of the Legislature and Constitutional Conventions, and reports of State officers.

Resolved by the Legislature of West Virginia :

That the Secretary of State furnish, without charge, and mail to the Congressional Law Library at Washington City, D. C., a copy of all the laws of this State, and journals of the several session of the Legislature, or of such of them as may be in his office, and are subject to sale or distribution; also the journals of the two Constitutional Conventions and the reports of the several State officers.

ADOPTED December 17, 1873.

[No. 45.]

Joint Resolution appointing a joint committee to examine the executive offices

Resolved by the Legislature of West Virginia :

That a joint Committee consisting of two on the part of the Senate and three on the part of the House of Delegates be appointed to exam-

ine into the condition of the several State executive offices and report to this Legislature at as early a day as practicable and that they are empowered to send for persons and papers, and that they report whether the expenses of any of the said offices may be reduced ; that they ascertain and report also the condition of the finances of the State, both State and School, in what banks deposited, how much, when deposited, and at what rate of interest, direct or indirect.

ADOPTED December 17, 1873.

[No. 46.]

Joint Resolution requesting the authorities of the United States Government to have made a geological survey of this State.

WHEREAS, Recognizing the great benefits that may be realized by a geological survey of this State, not only to her citizens, but also to the General Government, inasmuch as said survey would greatly aid in developing or making known the resources and natural wealth of the same, and thereby increasing our contributions to the national revenue; and

WHEREAS, The people of this State are desirous that the United States Government may appropriate money for a railroad running from Washington, D. C., to Cincinnati, Ohio, and which would require large expenditures of money within the territory of this State; and

WHEREAS, The people of this State are requesting the Federal Government to take possession of and complete the James River and Kanawha Canal, and asking assistance in the completion of the Chesapeake and Ohio canal;

Therefore, in order that the United States Congress may the more intelligently consider the above and other questions that relate to the interest of the State, and also to the United States,

Resolved by the Legislature of West Virginia :

1. That the authorities of the United States Government are respectfully requested to have made a geological survey of this State; and
2. That our Senators be and are hereby, instructed, and our mem-

bers of the House of Representatives requested to use their influence toward accomplishing that end, and,

3. That the clerk of the House of Delegates send a copy of these resolutions to the President of the Senate, the Speaker of the House of Representatives, and to each of our Senators and members in Congress.

ADOPTED December 13, 1873.

[No. 47.]

Joint Resolution directing the Attorney General to take such measures as may be necessary to protect the State from the acts of persons engaged in unlawfully mining under the bed of the Ohio river.

WHEREAS, It is represented that non-residents of this State, and others are engaged in mining coal and removing the same from under the bed of the Ohio river, thereby trespassing upon, and unlawfully taking and appropriating the property of the State to their own use; therefore,

Resolved by the Legislature of West Virginia :

That the Attorney General be and he is hereby directed, without unnecessary delay, to inquire into the facts above set forth, and institute such legal proceedings, either in the United States or State courts, as he may deem necessary to protect the interests of the State, and recover such damages as the State may have suffered in such cases, and prosecute the same to a final determination; and the Governor is hereby authorized and directed upon the application of the Attorney General, to render all the assistance necessary in such cases, and to draw upon the contingent fund of the State to defray the expenses incurred in said inquiry and prosecution. The Attorney General shall report all his proceedings in said inquiry and prosecutions to the Governor, who shall transmit the same to the Legislature.

ADOPTED December 20, 1873.

CORPORATIONS.

THE PARKERSBURG PACKET COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

We, the undersigned agree to become a corporation by the name of The Parkersburg Packet Company, for the purpose of carrying on a transportation business in the steamboats and barges upon the western rivers, and also to conduct and carry on a general wharf and commission business at any place where it may be deemed necessary by said company; which corporation shall keep its principal office or place of business at Parkersburg, in the county of Wood, and State of West Virginia, and is to expire on the 19th day of February, 1872. And for the purpose of forming the said corporation we have subscribed the sum of one thousand dollars to the capital thereof, and have paid in on said subscription the sum of one hundred dollars; and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to seventy-five thousand dollars in all. The capital so subscribed is divided into shares of fifty dollars each, which are held by the undersigned respectively as follows: that is to say, by

Johnson N. Camden, of Parkersburg, two shares;
John V. Rathbone, of Parkersburg, two shares;
William I. Pool, of Parkersburg, two shares;
William Logan, of Parkersburg, two shares;
Edmund L. Gale, of Parkersburg, two shares;
James N. Murdock, of Parkersburg, two shares;
Kenner B. Stephenson, of Parkersburg, two shares;
Solomon Prager, of Parkersburg, two shares;
Isaac W. Hitshue, of Parkersburg, two shares;
Edmund P. Chancellor, of Parkersburg, two shares;

And the shares hereafter sold are to be divided into shares of like amount.

Given under our hands this nineteenth day of February, one thousand and eight hundred and seventy-two.

(Signed.)

J. N. CAMDEN,
JOHN V. RATHBONE,
WM. T. POOL,
WM. LOGAN,
EDMUND . GALE,
JAMES N. MURDOCK,
KENNER B. STEPHENSON,
SOLOMON PRAGER,
ISAAC W. HITSHUR,
EDMUND P. CHANCELLOR.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the nineteenth day of February, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-fourth day of February, eighteen hundred and seventy-two.

G. S.

(Signed)

JOHN M. PHELPS,
Secretary of the State.

THE MECHANICS MUTUAL BUILDING ASSOCIATION.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of The Mechanics Mutual Building Association, for the purpose of accumulating by the savings of the stockholders, a cash capital to be loaned to them severally, to be used in purchasing real estate, building.

and repairing houses, and for such other purposes as may be necessary or proper, at Martinsburg, in the county of Berkeley, and State of West Virginia, and is to expire on the first day of April A. D., 1882 and for the purpose of forming the said corporation we have subscribed the sum of one thousand dollars, to the capital thereof and have paid in on said subscription, the sum of one hundred dollars, and desire to increase the said capital by sales of additional shares from time to time to two hundred thousand dollars in all. The capital so subscribed is divided into shares of two hundred dollars each, which are held by the undersigned respectively as follows, that is to say :

William Smarr, one share ;

Henry Fleishman, one share :

Henry W. Shelky, one share ;

Anthony Stanbley, one share ;

Adam Smith, one share ; all residents of Martinsburg, Berkeley county, West Virginia. And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this fifteenth day of February, A. D., eighteen hundred and seventy-two.

Signed.

WM. M. SMARR,
H. FLEISHMAN,
HENRY W. SHELKY,
ANTHONY STANBLEY,
ADAM SMITH,

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of April, eighteen hundred and eighty-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this eighteenth day of March, eighteen hundred and seventy-two.

{
G. S.
}

(Signed.)

JOHN M. PHELPS.
Secretary of the State.

THE BOLIVAR MARBLE COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Bolivar Marble Company, for the purpose of quarrying, manufacture and sale of marble, at Bolivar, county of Jefferson, State of West Virginia, which corporation shall keep its principal office or place of business at Washington City, D. C., and is to expire on the first day of January, 1892. And for the purpose of forming said corporation we have subscribed the sum of one hundred thousand dollars to the capital thereof, and have paid in on said subscription the sum of ten thousand dollars, and desire the privilege of increasing said capital by sales of additional shares, from time to time, to one million of dollars in all. The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say:

Horace R. Howlett, of Washington, D. C., two hundred and fifty shares;

William Bradley, of Washington, D. C., two hundred and fifty shares;

Joseph F. Bradley, of Washington, D. C., two hundred and fifty shares;

Silas L. Loomis, of Washington, D. C., one hundred and twenty-five shares; and

Lafayette C. Loomis, of Washington, one hundred and twenty-five shares;

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this eighth day of February, eighteen hundred and seventy-two.

(Signed.)

HORACE R. HOWLETT, [SEAL]
L. C. LOOMIS, [SEAL.]
WM. BRADLEY, [SEAL.]
JOSEPH F. BRADLEY, [SEAL.]
SILAS L. LCOMIS, [SEAL.]

Wherefore, The corporators named in said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen

hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this nineteenth day of March, eighteen hundred and seventy-two.

G. S.

(Signed)

JOHN M. PHELPS,
Secretary of the State.

THE MASON COUNTY PRINTING AND PUBLISHING COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

We, the undersigned, agree to become a corporation by the name of Mason County Printing and Publishing Company, for the purpose of printing and publishing a newspaper to have general circulation, and also to do all kinds of job or other printing, and any and all things else necessarily connected therewith; which corporation shall keep its principal office or place of business at Point Pleasant, Mason county, West Virginia, unless, and until located at some other place, within said county, by a majority vote of the stockholders of said corporation. Said corporation is to expire on the twentieth day of March, A. D. eighteen hundred and ninety-two, (A. D. 1892.) And for the purpose of forming the said corporation we have subscribed the sum of fifteen hundred and ten dollars to the capital stock thereof, and have paid in on said subscription the sum of one hundred and fifty-one dollars, and desire the privilege of increasing the said capital stock, by sales of additional shares, from time to time, to six thousand dollars in all. The capital stock so subscribed is divided into shares of ten dollars each, which are held by the undersigned respectively as follows: that is to say, by

George W. Moredock, fifty shares;
R. L. Winkleblack, twenty shares;
Major Brown, ten shares;
Thomas B. Swann, ten shares;

S. A. Burnap, ten shares ;
 A. C. Mason, five shares ;
 John W. Myers, five shares :
 F. A. Guthrie, five shares :
 William Smith, five shares ;
 C. Shrewsbury, ten shares ;
 B. L. Miles, five shares ;
 Baptiste Gilmore, three shares ;
 William French, three shares ;
 H. McDaniel, five shares ;
 J. A. Gibbons, five shares ;

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this twelfth day of March, A. D. one thousand eight hundred and seventy-two.

(Signed,)

GEORGE W. MOREDOCK,
 R. L. WINKLEBLACK,
 MAJOR BROWN,
 S. A. BURNAP,
 A. C. MASON,
 JOHN H. MYERS,
 F. A. GUTHRIE,

WILLIAM SMITH,
 C. SHREWSBURY,
 B. L. MILES,
 BAPTISTE GILMORE,
 WM. FRENCH,
 H. MCDANIEL,
 J. A. GIBBONS,

T. B. SWANN.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twentieth day of March, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twentieth day of March, eighteen hundred and seventy-two.

{
 G. S.
 }

(Signed,)

JOHN M. PHELPS,
 Secretary of the State.

POST THOBURN NO. 4 GRAND ARMY OF THE REPUBLIC.

I, John M. Phelps, Secretary of the State of West Virginia, hereby

certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Post Thoburn No. 4. Grand Army of the Republic, of Wheeling, West Virginia, for the purpose of owning real and personal property in their corporate name, to collect dues from the members thereof, to dispense charity, to sue and be sued in their corporate name, and generally to do all things and to transact all business that may be lawfully done by like corporations, and as such corporation desire the privilege of making such by-laws for the government of said corporation as shall be adopted by a majority of the members thereof, which shall not be inconsistent with the constitution and laws of the State of West Virginia; which corporation shall keep its principal office or place of business at Wheeling, Ohio county, West Virginia, and is to expire on the tenth day of February, eighteen hundred and ninety-two. And for the purpose of forming the said corporation we have subscribed the sum of ten thousand dollars, and have paid in on the said subscription the sum of eight hundred (\$800) dollars in money and two hundred (\$200) dollars in personal property, in all one thousand dollars, and desire the privilege of increasing the capital of said corporation, by sales of additional shares, from time to time, to fifty thousand dollars in all. The capital so subscribed is divided into shares of ten (\$10) dollars each, which are held by the undersigned respectively as follows: that is to say,

By R. H. Cochran, one hundred and fifty shares:

By C. J. Rawling, one hundred and fifty shares;

By John Carlin, one hundred and fifty shares;

By B. B. Dovener, one hundred and fifty shares;

By R. T. Higgins, one hundred and fifty shares;

By William Little, one hundred and twenty-five shares; and

By James C. Saunders, one hundred and twenty-five shares; all of the city of Wheeling, Ohio county, West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this nineteenth day of February, eighteen hundred and seventy-two.

(Signed,)

JOHN CARLIN,
JAMES C. SAUNDERS,
B. B. DOVENER,
R. H. COCHRAN,
R. T. HIGGINS,
C. J. RAWLING,
WILLIAM LITTLE.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the tenth day of February, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-sixth day of March, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

SOMES REFRIGERATING COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the **Somes Refrigerating Company**, for the purpose of constructing, cooling, ventilating, refrigerating and warming buildings and apartments; the manufacture, use and sale of coolers, refrigerators and other articles of manufacture, the making of ice and ice machines; the preservation of food and other perishable substances; and for other purposes; which corporation shall keep its principal office or place of business at Washington, District of Columbia, and is to expire on the thirteenth day of March, one thousand eight hundred and ninety-two. And for the purpose of forming said corporation we have subscribed the sum of two hundred thousand (\$200,000) dollars to the capital thereof, and have paid in on said subscription the sum of twenty thousand (\$20,000) dollars. The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows: that is to say, by

Daniel E. Somes, of Washington, D. C., two hundred and fifty shares;

Frank C. Somes, of Washington, D. C., one thousand, two hundred and fifty shares;

Silas L. Loomas, of Washington, D. C., two hundred and fifty shares;

Lafayette C. Loomis, of Washington, D. C., two hundred and fifty shares;

John H. Rice, of Bangor, Maine, twenty shares;

Given under our hands and seals this sixteenth day of March, A. D. eighteen hundred and seventy-two.

(Signed,)

D. E. SOMES,	[SEAL.]
F. C. SOMES,	[SEAL.]
SILAS L. LOOMIS,	[SEAL.]
L. C. LOOMIS,	[SEAL.]
JOHN H. RICE,	[SEAL.]

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the thirteenth day of March, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-seventh day of March, eighteen hundred and seventy-two.

{
G. S.
}

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

THE ENTERPRISE BUILDING ASSOCIATION OF MORGANTOWN.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned hereby agree to become a corporation by the name of the Enterprise Building Association of Morgantown for the purpose of accumulating a fund in a safe and easy way, by the saving,

of the members thereof, and the profits thereon, to enable them to purchase homesteads and to buy, build and repair houses, the business thereof being to loan out the assets of said corporation to the members thereof for the purpose aforesaid, or to invest in any desirable personal securities, or receive deposits, or engage in other legitimate business that will enhance the object of the corporation; which corporation shall keep its principal place or office of business at Morgantown, in the county of Monongalia, and is to expire in seven years from the date of incorporation, or when a sufficient amount has been received by the association to make each share of stock worth one hundred dollars. And for the purpose of forming the said corporation we have subscribed the sum of five hundred dollars to the capital thereof and have paid in on said subscription the sum of fifty dollars, and desire the privilege of increasing the said capital by the sale of additional shares from time to time to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows:

A. W. Lorentz, one share;

J. A. Davis, one share;

W. C. McGrew, one share.

W. P. Willey, one share;

W. W. Dering, one share;

And the stock hereafter to be sold is to be divided into shares of a like amount.

Given under our hands this eighth day of March, eighteen hundred and seventy-two.

(Signed)

WM. C. MCGREW,
A. W. LORENTZ,
JAMES A. DAVIS,
W. P. WILLEY,
W. W. DERING.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the fourth day of April, eighteen hundred and seventy-nine an corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the

City of Charleston, this fourth day of April, eighteen hundred and seventy-two.

G. S.

JOHN M. PHELPS.
Secretary of the State.

ACADEMY OF MUSIC.

I, John M. Phelps, Secretary of the State of West Virginia, here by certify that an agreement duly acknowledged and accompanied by the proper affidavits, has this day been delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Academy of Music for the purpose of purchasing and holding real estate and erecting thereon a building to be used in whole or in part as a place for giving dramatic, musical or other public exhibitions and to be rented or leased in whole or in part for such exhibitions or for any other lawful purpose; which corporation shall keep its principal office or place of business at Wheeling, in the county of Ohio, and is to expire on the 28th day of March, 1892. And for the purpose of forming the said corporation we have subscribed the sum of four hundred and fifty dollars to the capital thereof and paid in on said subscription the sum of forty-five dollars; and desire the privilege of increasing the said capital by sales of additional shares from time to time to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of fifty dollars each which are held by the undersigned respectively as follows, that is to say:

M. Pollock, of Wheeling, one share;
W. W. Franzheim, of Wheeling, one share;
John McLure, of Wheeling, one share;
Thomas Hughes, one share;
Alonzo Loring, one, share;
James F. Barnes, one share;
A. Reymann, one share;
J. H. Hobbs, one share,
Thomas M. Darrah, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands the 28th day of March eighteen hundred and sevty-two.

(Signed.)

M. POLLOCK,
W. W. FRANZHEIM,
JOHN MCLURE,
THOMAS HUGHES,
A. REYMANN,
ALONZO LORING,
JAMES F. SARNES,
J. H. HOBBS,
THOMAS M. DARBAH,

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-eighth day of March, eighteen hundred and ninety-two a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State. at the City of Charleston, this fifteenth day of April, eighteen hundred and seventy-two.

{
G. S.
}

JOHN M. PHELPS,
Secretary of the State.

THE WEST VIRGINIA FEMALE SEMINARY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the West Virginia Female Seminary, with its office or principal place of business at Union, in Monroe county, West Virginia and is designed to be perpetual and for the purpose of forming the said corporation we have subscribed the sum of thirteen hundred dollars to the

capital thereof and have paid in on said subscriptions the sum of one hundred and thirty dollars, and desire the privilege of increasing the said capital by sale of additional shares from time to time to fifty thousand dollars in all. The capital so subscribed in divided into shares of fifty dollars each which are held by the undersigned respectively as follows, that is to say :

By John M. Rowan, Union, W. Va., four shares ;
 By C. E. Johnson, Union, W. Va., four shares ;
 By Stewart Warren, Union, W. Va., four shares ;
 By Isaac E. Bare, Union, W. Va., two shares ;
 By Charles S. Archey, Monroe county, W. Va., four shares ;
 By Anderson McNeer, Monroe county, W. Va., four shares ;
 By Frank Hereford, Union, W. Va., four shares ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this thirteenth day of April eighteen hundred and seventy-two (1872.)

(Signed.)

JOHN M. ROWAN,
 C. E. JOHNSON,
 S. WARREN,
 I. E. BARE,
 C. S. ARCHY,
 A. McNEER,
 FRANK HEREFORD,

Wherefore, The corporators named in the said agreement, and who have sined the same, and their successors and assigns are hereby declared to be, from this date, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this 22d day of April eighteen hundred and seventy-two.

G. S.

JOHN M. PHELPS,
 Secretary of the State.

THE MOUNDSVILLE GLASS COMPANY.

I John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by

the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of Moundsville Glass Company for the purpose of manufacturing and selling glassware, and making all moulds and tools for manufacturing glassware, packages for packing the same and any article required to attach to glassware when manufactured, which corporation shall keep its principal office or place of business at Moundsville in the county of Marshall, State of West Virginia, and it is to expire on the first day of April eighteen hundred and ninety-two.

And for the purpose of forming the said corporation we have subscribed the sum of one thousand dollars to the capital thereof, and have paid in on said subscription the sum of one hundred dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of fifty dollars each which are held by the undersigned respectively as follows, that is to say

By George Edwards, of Moundsville, W. Va., two shares ;
By L. T. Gray, of Moundsville, W. Va., two shares ;
By Thomas Fleming, of Moundsville, W. Va. two shares :
By M. C. Ruly, of Moundsville, W. Va., two shares ;
By L. B. Purdy, of Moundsville, W. Va., two shares ;
By T. J. Hammond, of Moundsville, W. Va., two shares ;
By Thomas Finn, of Moundsville, W. Va., two shares ;
By J. W. Gallaher, of Moundsville, W. Va., two shares ;
By H. W. Hunter, of Moundsville, W. Va., two shares ;
By J. S. McFadden, of Moundsvillle, W. V., two shares :

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands the fifteenth day of April, A. D., eighteen hundred and seventy-two.

(Signed.)

GEORGE EDWARDS,
L. T. GRAY,
THOMAS FLEMING,
M. C. RULY,
L. B. PURDY.

S. G. HAMMOND,
THOMAS FINN,
J. W. GALLAHER,
H. W. HUNTER,
G. S. MCFADDEN.

Wherefore, The corporators named in the said agreement, and who have signed the same, and thei successors and assigns, are hereby declared to be, from this date until the first day of April, eighteen hun-

dred and ninety-two a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-ninth day of April, eighteen hundred and seventy-two.

{
G. S.
}

(Signed.)

JOHN M. PHELPS,
Secretary of the State.

THE WEST VIRGINIA PUBLICATION COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The West Virginia Publication Company, for the purpose of printing and publishing a newspaper at the city of Wheeling, in the State of West Virginia, and carrying on other branches of printing business at said city, which corporation shall keep its principal office or place of business at said city, and is to expire on the twenty-third day of April, in the year eighteen hundred and ninety two. And for the purpose of forming the said corporation, we have subscribed the sum of ten thousand five hundred dollars to the capital thereof, and have paid in on said subscription the sum of one thousand and fifty dollars, and desire the privilege of increasing the said capital by the sale of additional shares, from time to time, to fifty thousand dollars in all. The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows: that is to say, by

Andrew Wilson, twenty shares;
Michael Reilly, ten shares;
Henry B. Miller, ten shares;
Dana L. Hubbard, fifteen shares;
Thomas Hughes, five shares;

CORPORATIONS.

Daniel Lamb, fifteen shares;
 Thomas O'Brien, ten shares;
 William C. Handlan, five shares;
 Patrick Kennedy, five shares;
 George O. Davenport, five shares; and
 John Handlan, five shares; all of whom reside in the said city of
 Wheeling.

And the capital to be hereafter sold is to be divided into shares of
 the like amount.

Given under our hands this twentythird day of April, eighteen hun-
 dred and seventy-two.

(Signed,)

A. WILSON,
 DANA L. HUBBARD,
 THOMAS HUGHES,
 WM. C. HANDLAN,
 G. O. DAVENPORT,

HENRY B. MILLER,
 P. KENNEDY,
 M. REILLY,
 JOHN HANDLAN,
 DANIEL LAMB,
 THOMAS O'BRIEN.

Wherefore, The corporators named in the said agreement, and who
 have signed the same, and their successors and assigns, are hereby
 declared to be, from this date until the twenty-third day of April,
 eighteen hundred and ninety-two, a corporation by the name and for
 the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the
 city of Charleston, this twenty-ninth day of April, eighteen hundred
 and seventy-two.

{
 G. S.
 }

(Signed,)

JOHN M. PHELPS,
 Secretary of the State.

CABIN CREEK KANAWHA COAL COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, here-
 by certify that an agreement duly acknowledged and accompanied by
 the proper affidavits, has been this day delivered to me; which agree-
 ment is in the words and figures following:

The undersigned agree to become a corporation by the name of The Cabin Creek Kanawha Coal Company for the purpose of mining shipping and vending coal, mining and manufacturing iron, and sawing and manufacturing lumber, which corporation shall keep its principal office or place of business at Charleston in the county of Kanawha, and is to expire on the first day of January eighteen hundred and ninety-two.

And for the purpose of forming said corporation we have subscribed the sum of ten dollars to the capital stock thereof, and have paid in on said subscription the sum of one thousand dollars; and desire the privilege of increasing the said capital by sales of additional shares from time to time to one million of dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say:

Josua Fuller Reynolds, of Plymouth, Luzerne County, Pennsylvania, twenty shares;

John J. Shonk, of same place, twenty shares;

James B. Pierce, of the same place, twenty shares;†

Thomas Brodrick, of Wilkebarn, Luzerne County, Pennsylvania, twenty shares;

Thomas D. Cunmyngnam, of the same place, ten shares;

Richard H. Catlett, of Staunton Augusta County, Virginia, ten shares;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-ninth day of April eighteen hundred and seventy-two.

(Signed.)

J. F. REYNOLDS,
JOHN J. SHONK,
JAMES B. PIERCE,
THOMAS BRODRICK,
T. D. CUNMYNGHAM,
R. H. CATLETT,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety-two a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this thirtieth day of April, eighteen hundred and seventy-two.

G. S.

JOHN M. PHELPS,
Secretary of the State.

THE WILLIAMS COAL COMPANY OF KANAWHA.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Williams Coal Company of Kanawha, for the purpose of mining shipping and bending coal; and mining and manufacturing iron, and sawing and manufacturing lumber; which corporation shall keep its principal office or place of business, at Charleston in the county of Kanawha, and is to expire on the first day of January, 1892.

And for the purpose of forming said corporation we have subscribed the sum of ten dollars, to the capital stock thereof and have paid in on said subscriptions the sum of one thousand dollars; and desire the privilege of increasing the said capital by sales of additional shares from time to time to one million of dollars in all.

The capital so subscribed is divide into shares of one hundred dollars each which are held by the undersigned respectively as follows:

Joseph Fuller Reynolds, of Plymouth, Luzerne County, Pennsylvania, twenty shares;

John J. Shonk, of the same place, twenty shares;

James B. Pierce, of the same place, twenty shares;

Thomas Brodrick, of Wilksborn Luzerne County, Pennsylvania, twenty shares;

Thomas D. Cunyngnam, of the same place, ten shares;

Richard H. Catlett, of Staunton, Augusta County, Virginia, ten shares;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 29 day of April 1872.

(Signed.)

J. F. REYNOLDS,
JOHN J. SHONK,
JAMES B. PIERCE,
THOMAS DRODRIC,
THOMAS D. CUNNYNGHAM,
R. H. CATLETT.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this thirtieth day of April eighteen hundred and seventy-two.

{
G. S.
}

JOHN M. PHELPS,
Secretary of the State.

THE RITCHIE LYCEUM.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Ritchie Lyceum for the purpose of literary, scientific, religious and educational improvement the principal office or place of business to be at Toll Gate, Ritchie county, West Virginia, and the corporation to expire on the sixth day of April, one thousand nine hundred and seventy-two.

The corporators desire the privilege of purchasing a lot of ground, and to erect buildings thereon for library and other purposes necessa-

ry to the transaction of such business as may be required to the successful accomplishment of the objects of said society.

And for the purpose of forming the corporation we have subscribed the sum of four hundred and fifty dollars to the capital thereof, and have paid in on said subscription the sum of one hundred and fifty dollars, and desire the privilege of increasing the capital stock by sales of additional shares from time to time to five thousand dollars in all.

The capital so subscribed is divided into shares of five dollars each which are held by the undersigned respectively as follows, viz :

William T. Harris, eight shares ;
 Joseph Flanagan, seven shares ;
 Cyrus R. Wickes, six shares ;
 E. Griffin Taylor, four shares ;
 J. Casper Johnson, five shares ;
 Hiram S. Dotson, three shares ;
 Benjamin F. Kinsey, three shares ;
 All of Ritchie and Doddridge counties, West Virginia.

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands at Toll Gate, Ritchie county West Virginia, the thirteenth day of April one thousand eight hundred and seventy-two.

(Signed.)

W. T. HARRIS,
 JOHN C. JOHNSON,
 H. S. DOTSON,
 E. G. TAYLOR,
 CYRUS R. WICKES,
 B. F. KINSEY,
 JOSEPH FLANAGAN,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors, and assigns are hereby declared to be, from this date until the sixth day of April, nineteen hundred and seventy-two a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this fourteenth day of June, eighteen hundred and seventy-two.

G. S.

(Signed.)

JOHN M. PHELPS,
 Secretary of the State.

THE WEST VIRGINIA STATE AGRICULTURAL SOCIETY.

I, John M. Phelps, Secretary of the State of West Virginian, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me : which agreement is in the words and figures following.

The undersigned agree to become a coporation by the name of The West Virginia State Agricultural Society for the purpose of exhibiting the agricultural mineral and and manufacturing products of the State ; which corportion shall keep its principal office or place of business at the city of Charleston, in the county of Kanawha, and is to expire on the first day of January, A. D. one thousand nine hundred.

And for the purpose of forming the said corporation we have subscribed the sum of one hundred and fifty dollars to the capital thereof, and have paid in on said subscription the sum of fifteen dollars, and desire the privilege of increasing the said capital, by sales of additoinal shares from time to time to twenty-five thousand dollars in all.

The capital so subscribed is divided into shares of twenty-five dollars each which are held by the undersigned respectively as follows that is to say :

By J. B. Walker, one share ;
By Benj. H. Smith, one share ;
By William A. Quarrier, one share ;
By T. B. Swann, one share ;
By B. W. Byrne, one share ;
By J. L. Carr, one share ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-eighth day of June eighteen hundred and seventy-two.

(Signed.)

J. BRISBEN W ALREK,
JAMES L. CARR,
BENJ. H. SMITH,
WM. A. QUARRIER,
T. B. SWANN,
B. W. BYRNE,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be; from this date until the first day of January, nineteen

hundred, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, of the City of Charleston, this twenty-eighth day of June, eighteen hundred and seventy-two.

{
G. S.
}

(Signed.)

JOHN M. PHELPS,
Secretary of the State.

FATHER YAHU'S GYMNASTIC CLUB.

I, John M. Phelps, Secretary of the State West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following.

The undersigned agree to become a corporation by the name of Father Yahu's gymnastic club for the purpose of establishing a ten pin-ally for exercise and promotion of health, which corporation shall keep its principal buildings and places of exercise in the city of Wheeling, Ohio county, and is to exprie on July twelfth, eighteen hundred and ninety-two.

And for the purpose of forming the said corporation, we have subscribed the sum of three hundred dollars to the capital thereof and have paid in on said subscription, the sum of thirty dollars, and desire the privilege to increase the said capital by sales of additional shares from time to time, to fifteen hundred dollars in all.

The capital so subscribed is divided into shares of ten dollars each which are held by the undersigned respectively as follows:

Conrad A. Gaus, of Wheeling two shares;
Henry Daub, of Wheeling, ten shares;
Henry Hess, of Wheeling, five shares;
J. Kuttbauer of Wheeling, five shares;
Friedrick Barnhard, of Wheeling five shares;
August Schwertfeger, of Wheeling three shares;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twelfth day of July eighteen hundred and seventy-two.

(Signed.)

FREDRICK BARNHARD,
H. DAUB,
AUGUSTSCHWERTFEGER,
HENRY HESS,
CONRAD A. GAUS,
J. KUTTNAUER,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twelfth day of July, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this sixth day July, eighteen hundred and seventy-two.

G. S.

(Signed.)

JOHN M. PHELPS.

Secretary of the State.

THE WHEELING FURNITURE COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Wheeling Furniture Company, for the purpose of manufacturing and selling all kinds of furniture, which corporation shall keep its principal office or place of business at Wheeling, in the county of Ohio; and is to expire on the twelfth day of July, eighteen hundred and ninety-two. And for the purpose of forming the said corporation we have subscribed the sum of twenty-five hundred dollars

to the capital thereof, and have paid in the full sum of **twenty-five** hundred dollars of said subscription, and desire the **privilege** of increasing said capital, by sales of additional shares, **from time to time**, to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of **five hundred** dollars each, which are held by the undersigned respectively **as follows**: that is to say, by

Adam Feiler, one share:

Heinrich Kilwer, one share;

Friedrich Hubach, one share;

August Gulker, one share; and

Albert Lipphardt, one share; all of the city of Wheeling, Ohio county, West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twelfth day of July, eighteen hundred and seventy-two.

(Signed,)

ADAM FIELER.
HENRICH KILWER,
FRIEDRICK HUBACH,
AUGUST GULKER,
ALBERT LIPPHARDT.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twelfth day of July, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this eighteenth day of July, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

THE FRANKLIN GLASS COMPANY OF WHEELING.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of The Franklin Glass Company of Wheeling, for the purpose of manufacturing and selling glass of all kinds, making all articles used in the manufacture of glass, making packages for glass, and making any articles to be attached to glass-ware when manufactured, which corporation shall keep its principal office or place of business at the city of Wheeling, in the county of Ohio, and is to expire on the thirteenth day of July, 1892.

And for the purpose of forming the said corporation we have subscribed the sum of twenty thousand dollars to the capital thereof, and have paid in on said subscription the sum of two thousand dollars, and desire the privilege of increasing the said capital, by sales of additional shares, from time to time, to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of five hundred dollars each, which are held by the undersigned respectively as follows : that is to say, by

Simon Horkheiner, ten shares ;
Jacob Wise, four shares ;
William F. Stifel, six shares ;
C. E. Stifel, four shares ;
Peter Zoeckler, three shares ;
Henry Mickel, four shares ;
Peter Miller, two shares ;
A. C. Egerter, three shares ;
Peter Schermitzaur, two shares ;
George W. Eckhart, Jr., two shares ;
All residents of Wheeling, West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this thirteenth day of July, eighteen hundred and seventy-two.

(Signed,)

SIMON HORKHEIMER,
JACOB WISE,
WM. F. STIFEL,
C. E. STIFEL,
GEO. W. ECKHART, JR.,
ALFRED C. EGERTER,
HENRY MICKEL,
PETER MILLER,
PETER SCHLERNITZAUER,
PETER ZOECKLER, by
WM. F. STIFEL,
His Attorney in fact.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the thirteenth day of July, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this nineteenth day of July, eighteen hundred and seventy-two.

{
G. S.
}

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

THE MARSHALL LIMESTONE COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Marshall Limestone Company, for the purpose of quarrying, mining, storing, transporting and selling limestone, which corporation shall keep its principal office or place of business at the city of Wheel-

ing, in the county of Ohio, State of West Virginia, and is to expire on the twenty-fifth day of July, 1892.

And for the purpose of forming the said corporation we have subscribed the sum of five thousand dollars to the capital thereof, and have paid in on said subscription the sum of five hundred dollars, and desire the privilege of increasing the said capital, by sales of additional shares, from time to time, to fifty thousand dollars in all.

The capital so subscribed is divided into shares of one thousand dollars each, which are held by the undersigned respectively as follows: that is to say,

By Robert Marshall, of Ohio county, West Virginia, one share;

By George W. Eckhart, Jr., of the city of Wheeling, West Virginia, one share:

By Wm. F. Stifel, of the said city of Wheeling, one share;

By Patrick Kennedy, of the said city of Wheeling, one share; and

By C. Mabis, of said city of Wheeling, one share.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-fifth day of July, eighteen hundred and seventy-two.

(Signed,)

ROBERT MARSHALL, by
P. KENNEDY,
His Attorney in fact,
P. KENNEDY,
GEORGE W. ECKHART, JR.,
WM. F. STIFEL,
C. MABIS.

Wherefore, The corporators, named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-fifth day of July, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this thirtieth day of July, eighteen hundred and seventy-two.

{
G. S.
}

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

THE TIMES AND GAZETTE PRINTING COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Times and Gazette Printing Company, for the purpose of publishing newspapers and books, and printing all kinds of job work; which corporation shall keep its principal office or place of business at Parkersburg, in the county of Wood, and is to expire on the twentieth day of June, eighteen hundred and ninety-two.

And for the purpose of forming the said corporation we have subscribed the sum of eleven hundred dollars to the capital stock thereof, and have paid in on said subscription the sum of five hundred and fifty dollars, and desire the privilege of increasing said capital by sales of additional shares, from time to time, to ten thousand dollars in all.

The capital so subscribed is divided into shares of ten dollars each which are held by the undersigned respectively as follows, that is to say:

W. M. Clements, one hundred dollars;
Thomas G. Smith, two hundred dollars;
W. P. Thompson, one hundred dollars;
W. N. Chancellor, one hundred dollars;
J. B. Jackson, one hundred dollars;
W. J. Hill, one hundred dollars;
W. T. Poole, one hundred dollars;
J. V. Rathbone, two hundred dollars; and
J. M. Jackson, two hundred dollars.

In witness whereof the said parties have hereunto set their hands and seals this twentieth day of June, A. D. 1872.

(Signed,)

W. M. CLEMENTS, [SEAL.]
THOMAS G. SMITH, [SEAL.]
W. P. THOMPSON, [SEAL.]
W. N. CHANCELLOR, [SEAL.]
W. T. POOLE, [SEAL.]
JOHN V. RATHBONE, [SEAL.]
J. B. JACKSON, [SEAL.]
JAS. M. JACKSON, [SEAL.]
W. J. HILL, [SEAL.]

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-eighth day of June, eighteen hundred and ninety-two a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this 1st day of August, eighteen hundred and seventy-two.

{
G. S.
}

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

KANAWHA RIVER PACKET COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Kanawha River packet company, for the purpose of cruising navigation, and running one or more steamboats, (of which the steamer C. P. Huntington is one,) to carry freight and passengers from any or all points on the Kanawha river, in the State of West Virginia, to the city of Gallipolis, or any other point on the Ohio river; and tow boats and barges between the same points; which corporation shall keep its principal office of business at Charleston, in the county of Kanawha; and is to expire on the 15th day of August, 1892. And for the purpose of forming the said corporation we have subscribed the sum of five thousand five hundred dollars, (\$5,500,) to the capital thereof; and have paid in on said subscription the sum of five thousand five hundred dollars, (\$5,500,) and desire the privilege of increasing the said capital by sales of additional shares, from time to time to the sum of twenty-five thousand dollars (\$25,000) in all. The capital so

subscribed is divided into shares of \$500 each, which are held by the undersigned respectively as follows, that is to say :

John Q. Dickinson, residing in Kanawha Salines, holds one share.

James W. Oakes, residing in Kanawha Salines, one share.

Ebenezer Oakes, Jr., residing near the Kanawha Salines, W. Va., holds one share.

James A. McClurg, residing at Gallipolis, Ohio, holds six shares.

R. L. Hamilton, residing at the same place, holds two shares.

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this seventeenth day of August, eighteen hundred and seventy-two.

Signed :

E. OAKES, Jr.
JAS. A. McCLURG.
R. L. HAMILTON.
JOHN Q. DICKINSON.
JAS. W. OAKES.

Whereof, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the fifteenth day of August, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, in the city of Charleston, this twenty-sixth day of August, eighteen hundred and seventy-two.

G. S.

(Signed.)

JOHN M. PHELPS,
Secretary of State.

BALDING PUMP COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of The Balding Pump Company for the purpose of Manufacturing and selling pumps which corporation shall keep its principal office or place of business at Wheeling, in the county of Ohio, and is to expire on the twenty-first day of August eighteen hundred and ninety-two.

And for the purpose of forming said company we have subscribed the sum of five hundred dollars to the capital thereof, and have paid in on said subscription the sum of fifty dollars and desire the privilege of increasing the said capital by sales of additional shares from time to time to fifty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is say:

Anson Balding, of Jefferson County, State of Indiana, one share;
James Kerr, of Martinsburg, Belmont county, Ohio, one share;
James C. Gray, of Martinsburg, Belmont, county, Ohio, one share;
Samuel C. A. Hamilton, of Wheeling, West Virginia, one share;
Robert O. Donnell, of Wheeling, West Virginia, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twentieth day of August eighteen hundred and seventy-two (1872.)

(Signed.)

ANSON BALDING,
SAMUEL C. A. HAMILTON,
JAMES C. GRAY,
ROBERT O. DONNELL,
JAMES KERR,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-first day of August eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-sixth day of August eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
Secretary of the State

MONITOR TOW-BOAT AND BARGE COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, here by certify that an agreement duly acknowledged and accompanied by the proper affidavits, has this day been delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of **The Monitor Tow-Boat and Barge Company** for the purpose of towing boats and barges and transporting freight on the Ohio River and its tributaries, and for doing a general forwarding and commission business; which corporation shall keep its principal office or place of business at Wheeling, in the county of Ohio, State of West Virginia, and is to expire on the twenty-seventh day of August eighteen hundred and seventy-two.

And for the purpose of forming the said corporation we have subscribed the sum of thirty-two hundred dollars to the capital thereof, and have paid in on said subscription the sum of three hundred and twenty dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to fifty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say:

By John A. Armstrong, ten shares;

Alexander Coen, ten shares;

Thomas B. Armstrong, ten shares,

Abner P. Hays, one share;

All of the above of the City of Wheeling, County of Ohio, State of West Virginia, and

John H. Hanes, of the County of Belmont, State of Ohio, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 27th day of March eighteen hundred and seventy-two.

(Signed.)

JOHN A. ARMSTRONG,
ALEXANDER COEN,
THOMAS B. ARMSTRONG,
ABNER P. HAYS,
JOHN H. HANES.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the twenty-seventh day of August eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-third day of September, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

GRAFTON TOWN HALL ASSOCIATION.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me: which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Grafton Town Hall Association, for the purpose of purchasing and holding a lot of ground in the town of Grafton, and erecting thereon a building to be used as a Town Hall, and for other purposes; which corporation shall keep its principal office or place of business at Grafton, in the county of Taylor, and is to expire on the twelfth day of September eighteen hundred and ninety-two.

And for the purpose of forming the said corporation we have subscribed the sum of two hundred and fifty dollars to the capital thereof and have paid in on said subscriptions the sum of twenty-five dollars; and desire the privilege of increasing the said capital by sales of additional shares from time to time, to fifty thousand dollars in all.

The capital so subscribed is divided into shares of fifty dollars each which are held by the undersigned respectively as follows:

By John W. Mason, of Grafton, one share;
James H. Stout, of Grafton, one share;

George Brinkman, of Grafton, one share ;
 Alpheus D. Casteel, of Grafton, one share ;
 George W. Brown, of Grafton, one share ;

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this twelfth day of September, one thousand eight hundred and seventy-two.

(Signed.)

JOHN W. MASON,
 JAMES H. STOUT,
 GEORGE BRINKMAN,
 A. D. CASTEEL,
 GEORGE W. BROWN.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twelfth day of September, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-seventh day of September, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
 Secretary of the State.

THE PIEDMONT WORKING MEN'S BUILDING AND LOAN ASSOCIATION.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of The Piedmont Working Men's Building and Loan Association, for the purpose of raising money to be loaned among its members for buy-

ing, building, or repairing houses, and other legitimate business, which corporation shall keep its principal office or place of business, at Piedmont in the county of Mineral, and is to expire on the thirty-first day of December, A. D., one thousand eight hundred and eighty-four.

And for the purpose of forming said corporation we have subscribed the sum of one thousand five hundred dollars to the capital thereof, and have paid in on said subscription the sum of one hundred and fifty dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to two hundred and fifty thousand dollars in all.

The capital so subscribed is divided into shares of two hundred and fifty dollars each which are held by the undersigned respectively as follows, that is to say:

U. B. McCandlish, A. McDermett, Wm. A. Thrasher, J. V. Bell, Perry Minshall, all of Piedmont, Mineral County one share each; and George Dixon, of Westernport Allegany County, Maryland, one share.

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this 15th of October, 1872.

(Signed.)

U. B. McCANDLISH,
A. McDERMETT,
W. A. THRASHER,
J. V. BELL,
P. S. MINSHALL,
GEORGE DIXON.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the thirty-first day of December, eighteen hundred and eighty-four, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-first day of October, eighteen hundred and seventy-two.

G. S.

(Signed.)

JOHN M. PHELPS.
Secretary of the State.

THE ORTHOPOLITAN PRINTING COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Orthopolitan Printing Company for the purpose of publishing a daily, semi-weekly and weekly newspaper in the city of Parkersburg, Wood county, State of West Virginia, and also for the purpose of doing all kinds of job, book, and general printing and book binding, which corporation shall keep its principal office or place of business at the city of Parkersburg, aforesaid, and is to expire on the 24th day of October, 1892. And for the purpose of forming the said corporation we have subscribed the sum of five hundred dollars to the capital stock thereof, and have paid in on said subscriptions the sum of fifty dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to ten thousand dollars in all. The capital so subscribed is divided into shares of ten dollars each, which are held by the undersigned respectively as follows: that is to say, by

K. B. Stephenson, of Parkersburg, West Virginia, five shares;
M. C. C. Church, of Parkersburg, W. Va., five shares;
Theodore Winchester, Marietta, Ohio, twenty-five shares;
Walter S. Sands, of Parkersburg, W. Va., five shares;
Andrew G. Clark, of Parkersburg, W. Va., five shares;
S. C. Shaw, of Parkersburg, W. Va., five shares;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-fourth day of October, eighteen hundred and seventy-two.

(Signed,)

K. B. STEPHENSON,
M. C. C. CHURCH,
THEO. WINCHESTER,
WALTERS S. SANDS,
S. C. SHAW,
ANDREW G. CLARK.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-fourth day of October, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the

city of Charleston, this twenty-eighth day of October, eighteen hundred and seventy-two.

G. S.

(Signed)

JOHN M. PHELPS,
Secretary of the State.

THE ENSIGN MANUFACTURING COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation under and in pursuance of chapter fifty-four of the code of West Virginia, in relation to joint stock companies, and the acts amending the same, by the name of The Ensign Manufacturing Company, for the purpose of manufacturing car wheels, cars, railroad and other castings, and all kinds of machinery; which corporation shall keep its principal office or place of business at the city of Huntington, in the county of Cabell, and State of West Virginia, and is to expire on the 15th day of May, 1892.

And for the purpose of forming the said corporation we have subscribed the sum of sixty thousand dollars to the capital thereof, and have paid in on said subscriptions the sum of six thousand dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to two hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say: by

Ely Ensign, of Lime Rock, Connecticut, seventy shares, \$700 paid;
Sydney P. Ensign, of Lime Rock, Connecticut, seventy shares \$700 paid;

Nathaniel C. Ward, of North Canad, Connecticut, twenty shares, \$200 paid;

Collis P. Huntington, of 54 William street, New York, sixty shares, \$600 paid;

Richard Franchote, of Schenectady, fifty shares, \$500 paid;

Charles W. Barnum, of Lalisburg, twenty-five shares, \$250 paid;
 William H. Barnum, of Lalisburg, one hundred shares, \$1,000 paid;
 John H. Ketchum, Dover Plains, New York, fifty shares, \$500 paid;

Virgil F. McNeil, Connall Bridge, Connecticut, twenty shares, \$200 paid;

James H. Storrs, of Brooklyn, New York, twenty-five shares, \$250 paid;

Effingham B. Sutton, of New York City, thirty shares, \$300 paid;

Delos W. Emmons, of Huntington, West Virginia, ten shares \$100 paid;

William A. Wheeler, of Malone, New York, fifty shares, \$500 paid;

Milo B. Richardson, Sailsbury, Connecticut, twenty shares, \$200 paid;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 15th day of May, eighteen hundred and seventy-two.

(Signed)

C. P. HUNTINGTON,
 JAS. H. STORRS,
 E. B. SUTTON,
 R. FRANCHOTE,
 J. H. KETCHAM,
 W. A. WHEELER,
 V. F. MCNEILL,
 W. B. RICHARDSON,
 W. H. BARNUM,
 ELY ENSIGN,
 W. P. ENSIGN,
 N. C. WARD,
 C. W. BARNUM,
 D. W. EMMONS.

Wherefore, The corporators named in the said agreement, and who have siged the same, and their successors and assigns are hereby declared to be, from this date until the fifteenth day of May, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this fourth day of November, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
 Secretary of the State.

THE FRANKLIN BUILDING ASSOCIATION OF WHEELING.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Franklin Building Association of Wheeling, for the purpose of raising money to be loaned among the members of such corporation for use in buying lots or houses, or in building or repairing houses ; which corporation shall keep its principal office or place of business in Wheeling in the county of Ohio, and State of West Virginia, and is to expire on the twenty-eighth day of October, eighteen hundred and ninety-two.

And for the purpose of forming the said corporation we have subscribed the sum of sixteen hundred and fifty dollars to the capital thereof, and have paid in on said subscription the sum of one hundred and sixty-five dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to six hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred and fifty dollars each, which are held by the undersigned respectively as follows : that is to say, by

Charles W. Conner, one share ;
Isaiah Warren, one share ;
Robert J. Smyth, one share ;
Robert Campbell, one share ;
Grafton A. Beall, one share ;
W. F. Stifel, one share ;
N. Hubbard, one share ;
Charles H. Berry, one share ;
John S. Trimble, one share ;
Edmund Hobbs, Sr., one share ;
Edmund Hobbs, Jr., one share ;

All of the city of Wheeling, West Virginia.

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this twenty-eighth day of October, eighteen hundred and seventy-two.

(Signed,)

CHARLES W. CONNER, [SEAL]
 ISAIAH WARREN, [SEAL]
 B. J. SMYTH, [SEAL]
 R. CAMPBELL, [SEAL]
 GRAFTON A. BEALL, [SEAL]
 WM. F. STIFEL, [SEAL]
 N. HUBBARD, [SEAL]
 CHARLES H. BERRY, [SEAL]
 J. S. TRIMBLE, [SEAL]
 EDMUND HOBBS, SR., [SEAL]
 EDMUND HOBBS, JR., [SEAL]

Wherefore, The corporators named in said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-eighth day October, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twelfth day of November, eighteen hundred and seventy-two.

{
 G. S.
 }

(Signed)

JOHN M. PHELPS,
 Secretary of the State.

OHIO VALLEY IRON WORKS.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Ohio Valley Iron Works, for the purpose of acquiring lands, mining iron ore, limestone and coal, the making of pig-iron, the manufacturing iron and steel into bars, sheets, nails and other merchantable articles, making castings and machinery required for the above, and all the processes connected therewith. Which corporation shall keep its principal office or place of business at Moundsville, in the county of

Marshall, and is to expire on the fifteenth day of November, eighteen hundred and ninety-two.

And for the purpose of forming the said corporation, we have subscribed the sum of one thousand dollars to the capital thereof, and have paid in on said subscriptions the sum of one hundred dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to two hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say :

By G. S. McFadden, of Moundsville, one share ;

By David Roberts, of Moundsville, one share ;

By Henry Ward, of Moundsville, one share ;

By J. L. Parkinson, of Moundsville, one share ;

By J. M. Bell, of Moundsville, one share ;

By V. L. Cockayne, of Moundsville, one share ;

By George Edwards, of Moundsville, one share ;

By M. C. Keily, of Moundsville, one share ;

By S. W. Mathews, of Moundsville, one share ;

By J. S. Fairfax, of Wheeling, one share ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this fifteenth day of November, eighteen hundred and seventy-two.

Signed.

G. S. MCFADDEN,
DAVID ROBERTS,
HENRY WARD,
J. L. PARKINSON,
JNO. M. BELL,
V. L. COCKAYNE,
GEO. EDWARDS,
M. C. KEILY,
S. W. MATHEWS,
J. S. FAIRFAX.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the fifteenth day of November, eighteen hundred and ninety-two a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the

city of Charleston, this twenty-first day of November, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

CHESAPEAKE COAL COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Chesapeake Coal Company, for the purpose of mining coal, iron and other minerals, and transporting and converting the same, and for the purpose of manufacturing minerals and lumber, which corporation shall keep its principal office or place of business at the City of New York, in the State of New York, and is to expire on the sixth day of November A. D., eighteen hundred and ninety-two.

And for the purpose of forming the said corporation we have subscribed the sum of eighty thousand dollars to the capital thereof, and have paid in on said subscription the sum of eight thousand dollars, and desire the privilege of increasing the said capital by sale of additional shares from time to time to two hundred and fifty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say:

By H. C. Parsons, of Huntington, West Virginia, one hundred shares;

Wm. C. Wickham, of Hanover County, Virginia, fifty shares:

Henry Taylor, of Louisa County, Virginia, fifty shares;

Charles U. Williams, of Richmond, Virginia, fifty shares;

H. D. Whitcomb, of Richmond, Virginia, fifty shares;

Isaac Davenport Jr., of Richmond, Virginia, one hundred shares:

Charles E. Wortham, of Richmond, Virginia, one hundred shares;
 M. S. Smith, of Richmond, Virginia, one hundred shares;
 James Lees, of New York City, one hundred shares;
 Charles M. Fry, of New York City, one hundred shares;

And the capital to be hereafter sold is to be divided into shares of the amount.

Given under our hands this sixth day of November, A. D. one thousand eight hundred and seventy-two.

(Signed,)

H. CHESTER PARSONS,
 WM. C. WICKHAM,
 HENRY TAYLOR,
 CHARLES V. WILLIAMS,
 H. D. WHITCOMB,
 J. DAVENPORT JR.,
 CHARLES E. WORTHAM,
 M. S. SMITH,
 JAMES LEES,
 CHARLES M. FRY,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the sixth day of November, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this second day of December, eighteen hundred and seventy-two.

G. S.

(Signed.)

JOHN M. PHELPS.

Secretary of the State.

CENTRAL BUILDING ASSOCIATION NO. 2.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the

proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Central Building Association No. 2, for the purpose of raising money to be loaned among the members of such corporation for use in buying lots or houses, or in building or repairing houses; which corporation shall keep its principal office or place of business in Wheeling in the county of Ohio and is to expire on the twenty-fifth day of November, eighteen hundred and ninety-two.

And for the purpose of forming said corporation we have subscribed the sum of seven hundred and fifty dollars to the capital thereof, and have paid in on said subscriptions the sum of seventy-five dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to six hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred and fifty dollars each which are held by the undersigned respectively as follows, that is to say:

By George H. Copp, one share;
By George W. Eckbart, Jr., one share;
By Thomas O'Brien, one share;
By Joseph M. Brodie, one share;
And by John L. Rice, one share;
All of the City of Wheeling, West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands the twenty-fifth day of November, eighteen hundred and seventy-two.

(Signed.)

GEORGE H. COPP,
GEORGE W. ECKBART JR.,
THOMAS O'BRIEN,
J. M. BRODIE,
JOHN L. RICE.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-fifth day of November, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the State, at the City of Charleston, this third day of December, eighteen hundred and seventy-two.

G. S.

JOHN M. PHELPS,
Secretary of the State.

THE WEST VIRGINIA TRANSPORTATION COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

"The undersigned agree to become a corporation by the name of The West Virginia Transportation Company, for the purpose of the transportation of passengers and freight and the towing of boats on the Kanawha River between the Falls of Kanawha and Point Pleasant, and all intermediated points, and on any of the tributaries of the Kanawha river, and also on the Ohio river and any of its tributaries; which corporation shall keep its principal office or place of business in the City of Charleston, in the county of Kanawha, and State of West Virginia and is to expire on the twenty-first day of November in the year eighteen hundred and ninety two.

And for the purpose of forming said corporation we have subscribed the sum of twenty-five hundred dollars to the capital stock thereof and have paid one thousand dollars on said subscription and desire the privilege of increasing the said capital, by sales of additional shares of twenty-five dollars each from time to time to fifty thousand dollars, in all.

The capital so subscribed is divided into shares of twenty-five dollars each, which are held by the undersigned respectively as follows:

By W. T. Thayer, forty-nine shares;

Otis A. Thayer, forty-eight shares;

H. W. Reynolds, one share;

Wm. E. Truslow, one share;

James T. Doyle, one share.

That all and each of the corporators reside in the county of Kanawha, State of West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-first day of November eighteen hundred and seventy-two.

(Signed.)

W. T. THAYER,
O. A. THAYER,
H. W. REYNOLDS,
W. E. TRUSLOW,
JAS. T. DOYLE.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-first day of November, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this ninth day of December, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

THE ISLAND BUILDING ASSOCIATION.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of The Island Building Association, for the purpose of raising money to be used among the members in buying lots or houses, or in building or repairing houses, which corporation shall keep its principal office or place of business at Wheeling, in the county of Ohio, and is to expire on the first day of January, eighteen hundred and eighty-three.

And for the purpose of forming the said corporation, we have sub-

scribed the sum of five hundred dollars to the capital thereof and have paid in on said subscription, the sum of fifty dollars, and desire the privilege of increasing said capital by sales of additional shares from time to time, to two hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows that is to say : by

Jacob M. Bickel, Wheeling, one share;
 Henry C. Morgan, Wheeling, one share;
 J. B. Sheppard, Wheeling, one share;
 Simon Horkheimer, Wheeling, one share;
 C. H. Collier, Wheeling, one share ;

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this seventeenth day of December, eighteen hundred and seventy-two.

Signed :

J. M. BICKEL,	[SEAL.]
H. C. MORGAN,	[SEAL.]
J. B. SHEPPARD,	[SEAL.]
SIMON HORKHEIMER,	[SEAL.]
C. H. COLLIER,	[SEAL.]

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and eighty-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this sixth day of January, eighteen hundred and seventy-three.

{
G. S.
}

(Signed,)

JOHN M. PHELPS,
 Secretary of the State

THE JEFFERSON COUNTY BUILDING ASSOCIATION NO. 2.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Jefferson County Building Association No. 2, for the purpose of raising money to be used among the members of such corporation in buying lots or houses, or in building or repairing houses; which corporation shall keep its principal office or place of business at Charlestown, in the county of Jefferson, and is to expire on the first day of January, 1883.

And for the purpose of forming the said corporation we have subscribed the sum of thirteen hundred dollars to the capital stock thereof, and have paid in on said subscription the sum of one hundred and thirty dollars, and desire the privilege of increasing said capital by sales of additional shares, from time to time, to two hundred and sixty thousand dollars in all.

The capital so subscribed is divided into shares of twenty-six dollars each which are held by the undersigned as follows, that is to say, one share by each of the following parties:

David H. Cockrill,
Wm. H. Travers,
Wm. N. McDonald,
Julius C. Holmes,
James Trapnell,

All residents of the said town of Charlestown.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this fifteenth day of January, eighteen hundred and seventy-three.

(Signed.)

D. H. COCKRILL,
WM. H. TRAVERS,
WM. N. McDONALD,
JULIUS C. HOLMES,
JOSEPH TRAPNELL.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and eighty-three a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this seventeenth day of January, eighteen hundred and seventy-three.

G. S.

JOHN M. PHELPS,
Secretary of the State.

THE PARKERSBURG MINING COMPANY.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Parkersburg Mining Company, for the purpose of leasing and buying land for coal and other mineral puposes, mining and shiping coal and other minerals and selling the same; purchasing, building or hiring steam-boats, barges flats or other water crafts for the purpose of shipping or transporting coal, erecting buildings and fixtures for mining purposes, acquiring title to land and erecting buildings for miners, employees, and such other purposes as may be required to fully carry into effect the main purposes for which incorporation is being formed viz: The mining, shipping and sellin coal whic corporation shall keep its principal office or place of business at Parkersburg in the county of Wood, State of West Virginia, and is to expire on the first day of January eighteen hundred and ninety-two, unless sooner dissolved according to law.

And for the purpose of forming said corporation we have subscribed the sum of two hundred dollars to the capital thereof and have paid in on said subscription the sum of twenty dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to one hundred thousand dollars, in all.

The capital so subscribed is divided into shares of one dollars each, which are held by the undersigned respectively as follows: that is to say,

By Barna Powell, of Wood county, West Virginia, fifty shares, \$50 ;
Okey Johnson, same place, fifty shares, \$50 ;
Jacob Hendershot, same place, fifty shares, \$50 ;
Theodore L. Maurice, same place, twenty-five shares, \$25 ;
John Guess, same place, twenty-five shares, \$25 ;

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this second day of January, eighteen hundred and seventy-three.

(Signed,)

BARNA POWELL,
OKEY JOHNSON,
JACOB HENDERSHOT,
T. L. MAURICE,
JOHN GUESS.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety-two a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this 8th day of February eighteen hundred and seventy-three.

G. S.

JOHN M. PHELPS,
Secretary of the State.

THE BANK OF GRAFTON.

I, John M. Phelps, Secretary of the State of West Virginia, heroby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of Bank of Grafton, for the purpose of carrying on the business of bank in all its various branches, buying and selling gold and silver, bonds, bills of exchange, commercial papers, and other evidences of debt, loaning money upon real or personal security, receiving money upon transient on special deposit, to issue certificates of loans and deposits for money deposited, and to pay interest on the same, and generally to carry on such business as is usually carried on by a bank of discount and deposit; which corporation shall keep its principal office or place of business at Grafton, in the county of Taylor, and is to expire on the thirteenth day of February eighteen hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of five hundred dollars to the capital thereof, and have paid in on said subscriptions the sum of fifty dollars, and desire the privilege of increasing the said capital by additional shares from time, to time to fifty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows: that is to say, by

Thomas E. Davis, of Grafton, Taylor County, West Virginia, one share;

Thomas D. Howard, of Grafton, Taylor County, West Virginia, one share;

George W. Brown, of Grafton, Taylor County, West Virginia, one share;

John W. Mason, of Grafton, Taylor County, West Virginia, one share;

J. Marshall Allen, of Grafton, Taylor County, West Virginia, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands and seals this fourteenth day of February A. D., eighteen hundred and seventy-three.

(Signed,)

THOMAS E. DAVIS,
THOMAS D. HOWARD,
GEORGE W. BROWN,
JOHN W. MASON,
J. MARSHALL ALLEN,

Wherefore, The corporators named in the said agreement, and who

have signed the same, and their successors and assigns, are hereby declared to be, from this date until the thirteenth day of February, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twentieth day of February eighteen hundred and seventy-three.

{
G. S.
}

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

: —

THE PEOPLE'S DEPOSIT BANK OF MARTINSBURG.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The People's Deposit Bank of Martinsburg, for the purpose of the safe keeping and investment of such money as may proceed from the industry and economy of the citizens of the town and country; to receive weekly and transient deposits and conduct such other financial operations by discounting notes, drafts and bills of exchange as may aid the prosperity of the community in which they reside; which corporation shall keep its principal office or place of business in the city of Martinsburg in the county of Berkeley, and State of West Virginia, and is to expire on the first day of January A. D., eighteen hundred and ninety-three.

And for the purpose of forming said corporation we have subscribed the sum of two thousand dollars to the capital thereof and have paid in on said subscription the sum of two hundred dollars and desire the privilege of increasing the said capital thereof, by sales of additional shares from time to time, to two hundred thousand dollars in all.

The capital so subscribed is divided into shares of fifty dollar, which are held by the undersigned respectively as follows, that is to say:

C. M. Shaffer, five shares;
Samual Busey, two shares;

W. H. Showers, five shares;
 E. G. Jeffries, two shares;
 J. Nelson Wisner, two shares;
 J. W. Pitzer, two shares;
 M. J. C. Hoffman, two shares;
 Jacob Eversole, two shares;
 H. H. Blackburn, five shares;
 E. S. Troxell, four shares;
 Blackburn Hughes, two shares;
 L. M. Shaffer, two shares;
 D. M. Shaffer, five shares;
 All being citizens of Martinsburg, and the county of Berkeley,
 West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this fifteenth day of February, A.D., eighteen hundred and seventy-three.

(Signed,)

C. M. SHAFFER,
 SAMUEL BUSBY,
 W. H. SHOWERS,
 E. G. JEFFRIES,
 J. NELSON WISNER,
 J. W. PITZER,
 M. J. C. HOFFMAN,
 JACOB EVERSOLE,
 H. H. BLACKBURN,
 E. S. TROXELL,
 BLACKBURN HUGHES,
 L. M. SHAFFER,
 D. M. SHAFFER.

Wherefore, the corpators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, in the city of Charleston, this twenty-first day of February, eighteen hundred and seventy-three.

{
 G. S.
 }

(Signed.)

JOHN M. PHELPS,
 Secretary of the State

THE MARTINSBURG BUILDING ASSOCIATION
NO. 2.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

We the undersigned agree to become a corporation by the name of The Martinsburg Building Association No. 2, for the purpose of raising money to be used among the members of such corporation in buying lots and houses or in building or repairing houses and for other purposes authorized by law, which corporation shall keep its principal office or place of business at Martinsburg in the county of Berkeley, State of West Virginia, and is to expire on the first day January, eighteen hundred and ninety.

And for the purpose of forming said corporation, we have subscribed the sum of one thousand dollars to the capital thereof and have paid in on said subscription the sum one hundred dollars, and desire the privilege of increasing the said capital, by sales of additional shares from time to time, to two hundred thousand dollars in all.

The capital so subscribed is divided into shares of two hundred dollars each, which are held by the undersigned respectively as follows, that is to say: by

Lewis Schew, one;
Ferdinand Geiling, one;
Daniel Weil, one;
John Heller, one;
Albert Quenzel, one;

All residents of the town of Martinsburg, county of Berkeley, State of West Virginia.

And the capital to be hereafter sold, is to be divided into shares of the like amount.

Given under our hands this twenty-third day of February eighteen hundred and seventy-two.

(Signed,) /

LEWIS SCHEW,
FERDINAND GEILING,
DANIEL WEIL,
JOHN HELLER,
ALBERT QUENZEL,

Wherefore, The corporators, named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this second day of March, eighteen hundred and seventy-two.

G. S.

(Signed,)

JOHN M. PHELPS,
Secretary of the State.

HUNTINGTON BUILDING AND LOAN ASSOCIATION.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following.

The undersigned agree to become a corporation by the name of The Huntington Building and Loan Association, for the purpose of accumulating by the saving of the stockholders, a cash capital to be loaned to them severally, to be used in purchasing real estate, building and repairing houses, and for such other purposes as may be necessary or proper; which corporation shall keep its principal office or place of business at the city of Huntington, in the county of Cabell, and State of West Virginia, and is to expire on the first day of April, A. D. one thousand eight hundred and eighty-five.

And for the purpose of forming the said corporation we have subscribed the sum of one thousand dollars (\$1,000) to the capital thereof, and have paid in on said subscriptions the sum of one hundred dollars; and desire the privilege of increasing the said capital by sales of additional shares from time to time to two hundred thousand dollars in all.

The capital so subscribed is divided into shares of two hundred dollars each which are held by the undersigned respectively as follows that is to say:

By W. S. Downer, one share;

By E. Gibson, one share ;

By George Cullen, one share ;

By C. A. Harrison, one share ;

By W. F. Lewis, one share ;

All, the residents of the county of Cabell, and State of West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this fourth day of March, A. D. eighteen hundred and seventy-three.

(Signed.)

GEORGE CULLEN,
C. A. HARRISON,
W. S. DOWNER,
W. THURMAN LEWIS,
EUSTACE GIBSON.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be; from this date until the first day of April, eighteen hundred and eighty-five, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, of the City of Charleston, this tenth day of March, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE BANK OF UNION.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of

The Bank of Union, for the purpose of doing business as a bank of discount and deposit, and the usual financial business transacted by banks other than those of issue, which corporation shall keep its principal office or place of business at Union, in the county of Monroe, West Virginia, and is to expire on the first day of January, eighteen hundred and ninety-two.

And for the purpose of forming the said corporation we have subscribed the sum of fifteen thousand dollars (\$15,000) to the capital thereof, and have paid in on said subscription the sum of fifteen hundred dollars (\$1,500,) and desire the privilege of increasing the said capital, by sales of additional shares, from time to time, to two hundred thousand dollars (\$200,000) in all.

The capital so subscribed is divided into shares of one hundred dollars (\$100) each, which are held by the undersigned respectively as follows: that is to say,

Frank Hereford, fifty shares, \$5,000 ;
Henry M. Mathews, twenty-five shares, \$2,500 ;
Alex. F. Mathews, twenty-five shares, \$2,500 ;
Stuart I. Warren, five shares, \$500 ;
Samuel A. Clark, five shares, \$500 ;
M. J. Kester, two shares, \$200 ;
A. P. Bierne, ten shares, \$1,000 ;
A. H. Johnson, five shares, \$500 ;
J. E. Keenan, three shares, \$300 ;
Lewis Caperton, five shares, \$500 ;
R. J. Glendy, ten shares, \$1,000 ;
H. G. Davis, five shares, \$500 ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 25 day of January, 1873.

(Signed.)

FRANK HEREFORD,
STUART I. WARREN,
A. F. MATHEWS,
HENRY M. MATHEWS,
SAMUEL A. CLARK,
M. J. KESTER,
A. P. BIERNE,
A. H. JOHNSTON,
JOHN E. KEENAN,
LEWIS CAPERTON,
R. J. GLENDY, by
S. A. CLARK,
H. G. DAVIS.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this thirteenth day March, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE CABELL COUNTY PRESS PRINTING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following.

The undersigned agree to become a corporation by the name of The Cabell County Press Printing Company, for the purpose of printing and publishing and carrying on a weekly newspaper in Cabell county, West Virginia, at Barboursville, which will be chiefly devoted to the encouragement, development and faithful record of the material operations and interests of the State of West Virginia and the county of Cabell, in particular; which corporation shall have its office at Barboursville, and is to expire on the twenty-fifth day of February, in the year one thousand eight hundred and seventy-eight.

And for the purpose of forming the said corporation we have subscribed the sum of one thousand dollars, (\$1,000,) to the capital thereof; and have paid in on said subscription the sum of one hundred dollars, (\$100,) and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to five thousand dollars (\$5,000) in all.

The capital so subscribed is divided into shares of ten dollars (\$10)

each which are held by the undersigned, all residents of Cabell county, West Virginia, respectively as follows, that is to say :

T. B. Kline, eleven shares, \$110 ;
 H. M. Scott, ten shares, \$100 ;
 R. D. Bright, ten shares, \$100 ;
 Lucien C. Ricketts, eleven shares, \$110 ;
 George F. Miller, Jr., six shares, \$60 ;
 Joseph S. Miller, ten shares, \$100 ;
 George A. Creel, ten shares, \$100 ;
 C. M. Moore, five shares, \$50 ;
 C. W. Smith, eleven shares, \$110 ;
 Albert Laidley, eleven shares, \$110 ;
 B. C. Vinson, five shares, \$50 ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-fifth day of February, in the year one thousand eight hundred and seventy-three.

(Signed,)

T. B. KLINE,	ALBERT LAIDLEY,
H. M. SCOTT,	C. M. MOORE,
R. D. BRIGHT,	GEO. A. CREEL,
LUCIEN C. RICKETTS,	B. C. VINSON
C. W. SMITH,	JOS. S. MILLER,
GEO. F. MILLER, JR.	

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-fifth day of February, eighteen hundred and seventy eight, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this eighteenth day of March, eighteen hundred and seventy-three.

{ G. S. }

C. HEDRICK,
 Secretary of the State.

THE PARKERSBURG AND OHIO RIVER TRANSPORTATION COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

We, the undersigned agree to become a corporation by the name of The Parkersburg and Ohio River Transportation Company, for the purpose of carrying on a transportation business on the Ohio river and its tributaries, in steamboats, barges and flat boats ; and also to conduct and carry on a general wharf and commission business at any place where it may be deemed necessary by said company for the purposes aforesaid. Said company shall have its principal office in the city of Parkersburg, in the county of Wood, and State of West Virginia, and is to expire on the sixteenth day of April, eighteen hundred and ninety-three.

And for the purpose of forming the said corporation, we have subscribed the sum of twenty thousand dollars to the capital thereof, and have paid in on said subscription the sum of sixteen thousand dollars, and desire the privilege of increasing the said capital by the sale of additional shares, from time to time, to seventy-five thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say :

James S. Gardner, forty-seven shares ;
William M. Birely, forty-seven shares ;
E. P. Chancellor, forty-seven shares ;
Wm. N. Chancellor, forty-seven shares ; and
E. B. Cooper, twelve shares ;

All of said incorporators, except the said E. B. Cooper, are residents of the city of Parkersburg, in the county of Wood, and the said E. B. Cooper is a resident of Wellsville, Columbianna county, and State of Ohio.

And the shares hereafter sold are to be divided into shares of like amount.

Given under our hands this sixteenth day of April, one thousand eight hundred and seventy-three.

(Signed.)

JAS. S. GARDNER,
W. M. BIRBY,
E. P. CHANCELLOR,
E. B. COOPER,
W. M. CHANCELLOR.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors, and assigns are hereby declared to be, from this date until the sixteenth day of April, eighteen hundred and ninety-three a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-first day of April, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE MARTINSBURG BUILDING ASSOCIATION NO. 3.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Martinsburg Building Association No. 3, for the purpose of accumulating by the savings of the stock holders a cash capital to be loaned to them severally, to be used in purchasing real estate, building and repairing houses, and for such other purposes as may be necessary or proper; which corporation shall keep its principal office or place of business at Martinsburg, in the county of Berkeley, and State of West Virginia, and is to expire on the first day of May, A. D. 1890.

And for the purpose of forming the said corporation we have sub

scribed the sum of fourteen hundred dollars (\$1,400) to the capital thereof, and have paid in on said subscription the sum of one hundred and forty (\$140) dollars, and desire the privilege of increasing said capital, by sales of additional shares, from time to time, to one hundred and sixty thousand dollars (\$160,000) in all.

The capital so subscribed is divided into shares of two hundred dollars each, which are held by the undersigned respectively as follows, that is to say :

Charles P. Matthaei, one share ;
F. Gerling, one share ;
Albert Quenzel, one share ;
Frank D. Stanley, one share ;
A. Hogelsehatz, one share ;
Thomas E. Byers, one share ;
Lewis Schew, one share ;

All residents of the county of Berkeley, and State of West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this eighteenth day of April, A. D. eighteen hundred and seventy-three.

(Signed,)

CHAS. P. MATTHAEI.
F. GERLING,
ALBERT QUENZEL,
FRANK D. STALEY,
A. HOGELSCHATZ,
THOS. E. BYERS,
LEWIS SCHEW.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of May, eighteen hundred and ninety, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-fourth day of April, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE FAIRMONT TOWN HALL COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Fairmont Town Hall Company, for the purpose of building a town hall in the town of Fairmont, Marion county, West Virginia, to be used for town hall purposes, to wit: to rent or let to theatrical, dramatic, literary and benevolent societies etc: Which corporation shall keep its office or place of business at Fairmont in the county and State aforesaid, and is to expire on the first day of January eighteen hundred and ninety-two.

And for the purpose of forming the said corporation, we have subscribed the sum of five hundred dollars to the capital thereof, and have paid in on said subscription, the sum of one hundred dollars; and desire the privilege of increasing the said capital by sales of additional shares from time to time, to ten thousand dollars, in all.

The capital so subscribed is divided into shares of five dollars each which are held by the undersigned respectively as follows, that is to say: by

Lindsey B. Haymond, ten shares;

R. C. Dunnington, ten shares;

F. M. Knight, ten shares;

John B. Crane, ten shares;

J. N. Gould, ten shares;

William A. Walklate, twenty shares;

Charles M. Shinn, ten shares;

Thomas Hough, ten shares;

And Charles M. Davison, ten shares;

All residents of Fairmont, in the county of Marion, State of West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 21st day of April, eighteen hundred and seventy-three.

(Signed.)

LINSEY B. HAYMOND,
ROBERT C. DUNNINGTON,
WILLIAM A. WALKLATE,
FRANCIS M. KNIGHT,
THOMAS HOUGH,
JACOB N. GOULD,
CHARLES M. SHINN,
JOHN B. CRANE,
C. M. DAVISON.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-fifth day of April, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

CLARKSBURG BUILDING AND LOAN ASSOCIATION.

We the undersigned agree to become a corporation by the name of the Clarksburg Building and Loan Association for the purpose of raising moneys to be loaned among the members of the same for use in buying lots or houses, or in building or repairing houses, and for all legal purposes prescribed by sections 25, 26, 27, 28 and 29 of chapter 54 of the Code of West Virginia, and for loaning money to its members for other purposes, which corporation shall keep its principal office or place of business in the town of Clarksburg in the county of Harrison, State of West Virginia, and shall expire on the first day of April 1893.

And for the Purpose of forming said corporation we have subscrib-

ed the sum of seven hundred and eighty dollars to the capital thereof and have paid in on said subscriptions the sum of seventy-eight dollars and desire the privilege of increasing said capital by sales of additional shares from time to time, to one hundred and thirty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred and thirty dollars each, which are held by the undersigned respectively as follows: that is to say:

Richard T. Lowndes, one share;
George J. Stealey, one share;
Elmer B. Hersey, one share;
Alfred Caywood, one share;
Edward T. Baldwin, one share;
John C. Vance, one share;

All residing and doing business in the town of Clarksburg county, and State aforesaid.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this tenth day of April, eighteen hundred and seventy-three.

(Signed.)

R. T. LOWNDES,
G. J. STEALEY,
A. CAYWOOD,
E. T. BALDWIN,
E. B. HERSEY,
JOHN C. VANCE

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of April, eighteen hundred and ninety-three, a corporation by the name of the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-eighth day of April, eighteen hundred and seventy-three.

{
G. S.
}

C. HEDRICK,
Secretary of the State.

COALSMOUTH BUILDING AND LOAN ASSOCIATION.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Coalsmouth Building and Loan Association for the purpose of erecting and completing a building in the city of St. Albans, say thirty-five feet wide by sixty feet long and two stories high, the upper story to be finished as a lodge-room for the meeting of lodges, they paying a reasonable rent therefor, provided that the I. O. of Good Templars are to have the right to meet at least one night in each week therein as long as they may wish by paying a reasonable rent therefor; the lower story to be finished in such manner and to be used for such purposes as the association may order, and for the purpose of erecting and completing such other buildings for such other purposes as the association may deem expedient; which corporation shall keep its principal office or place of business at St. Albans, in the county of Kanawha, and is to expire on the 24th day of September in the year 1892.

And for the purpose of forming the said corporation we have subscribed the sum of one thousand and ten dollars to the capital thereof and have paid in on said subscriptions, the sum of one hundred and one dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of ten dollars each which are held by the undersigned respectively as follows, that is to say:

Shining Star Lodge, residence St. Albans, thirty shares;

A. J. Beckett, residence, St. Albans, three shares;

J. M. Beckett, residence, St. Albans, three shares;

M. Luther Adams, residence, St. Albans, three shares;

J. F. Grass, residence, St. Albans, one share;

Steven P. Capehart, residence, St. Albans, ten shares;

James F. Hansford, residence, St. Albans, fifteen shares;

William Milby, residence, St. Albans, three shares;

P. Martin, residence St. Albans, one share;

R. H. M. Smith, residence, St. Albans, two shares;

F. Carel residence, St. Albans, one share;

William Walden, residence, St. Albans, one share;

George P. Thompson, residence, St. Albans, one share ;
 John W. Wood, residence, St. Albans, one share ;
 F. Williams, residence, St. Albans, ten shares ;
 James M. Hufford, residence, St. Albans, five shares ;
 Robert Ballard, residence, St. Albans, five shares ;
 George W. Miller, residence, St. Albans, one share ;
 Elias Wheeler, residence, St. Albans, two shares ;
 J. T. Simms, residence, St. Albans, two shares ;
 William J. Miller, residence, St. Albans, one share ;

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this 24th of September, 1872.

(Signed.)

Shining Star Lodge, I. O., of G. T., by R. H. M. Smith, Agent.

R. H. M. SMITH,
 A. J. BECKETT,
 J. M. BECKETT,
 JOHN H. WOOD,
 M. LUTHER ADAMS,
 S. P. CAPEHART,
 WM. WALDEN,
 R. BALLARD,
 ELIAS WHEELER,
 F. WILLIAMS,
 WM. MILBY
 W. J. MILLER,
 FREDERICK CAREL,
 GEORGE W. MILLER,
 JAMES F. HANSFORD,
 PLEASANT MARTIN,
 GEORGE P. THOMPSON,
 J. W. HUFFORD,
 J. T. SIMMS,
 J. F. GRASS.

Wherefore, The corporators named in said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-fourth day September, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this fourteenth day of May, eighteen hundred and seventy-three.

{
 G. S.
 }

(Signed)

C. HEDRICK,
 Secretary of the State.

THE CLARKSBURG COAL COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Clarksburg Coal Company, for the purpose of mining and selling coal or any other minerals, or manufacturing and selling Coke and any other thing or act necessary for the purpose of carrying on the business of this corporation, which corporation shall keep its principal office or place of business at Clarksburgs in the county of Harrison and is to expire on the 1st day of May, 1893.

And for the purpose of forming the corporation we have subscribed the sum of five hundred dollars to the capital thereof, and have paid in on said subscriptions the sum of fifty dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to twenty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is say:

Thomas W. Harrison, residence, Clarksburg, one share;
Luther Haymond, residence, Clarksburg, one share;
John Irwin, residence, Clarksburg, one share;
Rachard T. Lowndes, residence, Clarksburg, one share;
William R. Alexander, residence Clarksburg, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twentieth day of May, eighteen hundred and seventy-three.

(Signed.)

T. W. HARRISON,
WM. R. ALEXANDER,
JOHN IRWIN,
LUTHER HAYMOND,
R. T. LOWNDES.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the first day of May, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-sixth day of May, eighteen hundred and seventy-three.

G. S.

(Signed,)

C. HEDRICK,
Secretary of the State.

LEWISBURG AND RONCEVERTE TURNPIKE COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Lewisburg and Ronceverte Turnpike Company, for the purpose of constructing and operating a turnpike road from Lewisburg in Greenbrier county to Ronceverte a depot on the Chesapeake and Ohio rail road, in the same county, a distance of about four miles, which corporation shall have its principal place of business in the said town of Lewisburg, and county, aforesaid, and is to expire on the 22d of May 1893.

And for the purpose of forming the said corporation we have subscribed the sum of six hundred dollars to the capital thereof, and have paid in on said subscription the sum of sixty dollars, and desire the privilege of increasing the said capital sales of additional shares from time to time to fifteen thousand dollars in all.

The capital so subscribed is divided into shares of fifty

dollars each which are held by the undersigned respectively as follows, that is to say:

Thomas A. Henning & Son, four shares;
 J. E. Bell, two shares;
 Wm. H. Montgomery, two shares;
 James Withrow & Son, two shares;
 A. C. Snyder, one share;
 J. W. Matthews, one share;
 Each and all residents, of Greenbrier County West Virginia.

And the capital hereafter to be sold is to be divided into shares of like amount.

Given under our hands and seals this twenty-first day of May, one thousand eight hundred and seventy-three.

(Signed,)

T. A. HENNING & G. W. HENNING,	[SEAL]
For T. A. HENNING & SON,	
J. E. BELL,	[SEAL]
WM. H. MONTGOMERY,	[SEAL]
JAMES WITHROW, E. D. WITHROW,	
Firm of WITHROW & SON,	[SEAL]
J. W. MATHEWS,	[SEAL]
A. C. SNYDER,	[SEAL]

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-second day of May, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-seventh day of May, eighteen hundred and seventy-three.

G. S.

(Signed.)

C. HEDRICK,
 Secretary of the State.

THE NAIL CITY INSURANCE COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby

certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

The undersigned agree to become a corporation, by the name of the Nail City Insurance Company for the purpose of carrying on the business of fire marine and inland navigation insurance, which corporation shall keep its principal office or place of business at the city of Wheeling, in the county of Ohio, and State of West Virginia, and is to expire on the first day of May, A. D., eighteen hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of two hundred thousand dollars to the capital thereof, and have paid in on said subscriptions, the sum of forty thousand dollars ; and desire the privilege of increasing the said capital by sales of additional shares, from time to time to five hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say :

H. H. Peck, Boston, Massachusetts, four hundred shares, \$40,000 ;
G. W. Morris, Rockford, Illinois, four hundred shares, \$40,000 ;
M. D. Derick, Chicago, Illinois, four hundred shares, \$40,000.
D. C. Needham, Wheeling, West Virginia, four hundred shares, \$40,000 ;
M. L. Overton, Wheeling, West Virginia, four hundred shares, \$40,000 ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this seventh day of June, A. D., eighteen hundred and seventy-three.

(Signed,)

H. H. PECK,
G. W. MORRIS,
M. D. DERICK,
D. C. NEEDHAM,
M. L. OVERTON,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of May, eighteen

hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this seventeenth day of June eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

NEWAURG LOAN ASSOCIATION.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Newburg Loan Association, for the purpose of raising money to be loaned among the members thereof, to enable them to purchase and improve real estate, and erect and repair houses, and other buildings; which corporation shall keep its principal office or place of business at Newburg, Preston county, West Virginia, and is to expire on the twentieth day of May, eighteen hundred and ninety-three, unless sooner dissolved by law.

And for the purpose of forming the said corporation we have subscribed the sum of six hundred dollars to the capital thereof and have paid in on said subscriptions sixty dollars; and desire the privilege of increasing the said capital to fifty thousand (\$50,000) dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say:

James R. Smoot, one share;

Thomas M. Clayton, one share;

John E. Stuck, one share;

John A. Perrill, one share;

George W. Barnes, one share;

John A. Vanzdant, one share;

All residents of Newburg, Preston county, West Virginia.

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this nineteenth day of June, one thousand eight hundred and seventy-three.

(Signed.)

JAMES R. SMOOT,
THOS. CLAYTON,
JOHN E. STUCK,
JOHN A. PERRILL,
GEORGE W. BARNES,
JOHN A. VANZANDT.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twentieth day of May, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-third day of June, eighteen hundred and seventy-three.

{
C. S.
}

(Signed,)

C. HEDRICK,
Secretary of the State.

MARTINSBURG GAS COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of Martinsburg Gas Company, for the purpose of building, constructing and establishing gas works in the city of Martinsburg, State of West Virginia, also to manufacture supply and sell gas for the purpose of lighting and illuminating all the streets, squares, houses, grounds and alleys, public and private, in said town, and for the further purpose of manufatcuring and bending coal, and for all such other business as a gas company may lawfully do and perform; which corpora-

tion shall have its principal office or place of business at Martinsburg in the county of Berkeley and is to expire on the 1st day of June, 1893

And for the purpose of forming said corporation we have subscribed the sum of seven hundred and eighty dollars, to the capital thereof, and have paid in on said subscription the sum of eighty dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time, to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of ten dollars each which are held by the undersigned respectively as follows, that is to say:

H. H. Blackburn, twenty shares;

Neuton D. Baker, ten shares;

John S. Robinson, five shares;

David Weil, five shares;

R. M. Price, three shares;

Henry Wentz, five shares;

A. C. Miller, ten shares;

J. L. W. Baker, twenty shares;

All of whom reside at Martinsburg, in the county of Berkeley, and State of West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this fourteenth day of June, A. D., eighteen hundred and seventy-three.

(Signed.)

HENRY H. BLACKBURN,
NEUTON D. BAKER,
JOHN S. ROBINSON,
DAVID WEIL,
REUBEN M. PRICE,
A. C. MILLER,
HENRY WENTZ,
J. L. W. BAKER.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of June, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the

city of Charleston, this first day of July, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

WEST VIRGINIA BROMINE COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the West Virginia Bromine Company for the purpose of manufacturing and selling Bromine, which corporation shall keep its principal office or place of business at Mason City, in the county of Mason, and State of West Virginia, and is to expire on the first day of June, A. D., 1893. •

And for the purpose of forming the said corporation, we have subscribed the sum twenty-four thousand dollars to the capital thereof, and have paid in on said subscription the said sum of twenty-four thousand dollars, and desire the privilege of increasing said capital by sales of additional shares, from time to time, to seventy-five thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say:

Herman Lerner, of Mason City, in Mason county West Virginia, one hundred and fifty-nine shares; and

Bernhart Lerner, of Mason City, Mason county, West Virginia, one share; and

Gustavus Mallinckrodt, of the City, of St. Louis, twenty-seven shares; and

Edward Mallinckrodt, also of St. Louis seven shares; and

Otto Mallinckrodt, also of the said city of St. Louis, twenty-six shares;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this sixteenth day of June, eighteen hundred and seventy-three.

Signed.

H. LERNER,
B. LERNER,
G. MALLINCKRODT,
EDWARD MALLINCKRODT,
OTTO MALLINCKRODT.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of June, eighteen hundred and ninety-three a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this eighteen day of July, eighteen hundred and seventy-three.

G. S.

C. HEDRICK.
Secretary of the State.

THE HOUSTON MINING AND MANUFACTURING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Houston Mining and Manufacturing Company, for the purpose of mining and shipping coal, and manufacturing iron, which corporation shall keep its principal office or place of business at Charleston, in the county of Kanawha, and is to expire on the twentieth day of July, 1893.

And for the purpose of forming the said corporation we have subscribed the sum of twenty thousand (\$20,000) dollars to the capital thereof, and have paid in on said subscription the sum of two thousand dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, to-wit:

J. H. M. Houston, Logan, Hocking county, Ohio, forty shares;
 John Luker, Logan, Hocking county, Ohio, forty shares;
 M. B. Reber, Lancaster, Fairfield county, Ohio, forty shares;
 J. T. Daddow, Brownstown, Kanawha county, West Virginia, forty shares;
 J. W. Cracraft, Charleston, Kanawha county, West Virginia, forty shares;

And the capital to be hereafter sold, is to be divided into shares of the like amount.

Given under our hands this twenty-first day of July, eighteen hundred and seventy-three.

(Signed.)

J. H. M. HOUSTON,
 JOHN LUKER,
 M. B. REBER,
 J. T. DADDOW,
 J. W. CRACRAFT.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twentieth day of July, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-second day of July, eighteen hundred and seventy-three.

G. S.

C. HENDRICK,
 Secretary of the State.

MASON COUNTY AGRICULTURAL AND MECHANICAL ASSOCIATION.

I, Charles Hedrick, Secretary of the State of West Virginia, here by certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Mason County Agricultural and Mechanical Association, for the purpose of promoting and encouraging agricultural, mechanical and manufacturing interests, encouraging the raising and improvement of live-stock, and of acquiring real estate for fair grounds, buildings, &c.; which corporation shall keep its principal office of business at Point Pleasant, Mason county, West Virginia, and to expire January 1st, 1893.

And for the purpose of forming said coporation we have subscribed the sum of five hundred and ten dollars to the capital thereof, and have paid in on said subscription the sum of fifty-one dollars, and desire the privilege of increasing said capital, by sales of additional shares, from time to time, to twenty thousand dollars in all.

The capital so subscribed is divided into shares of five dollars each, which are held by the undersigned respectively as follows, to-wit:

J. W. Steenbergen, Mason county, West Virginia, ten shares;
Peter S. Lewis, Mason county, West Virginia, ten shares;
P. C. Eastham, Mason county, West Virginia, five shares;
Wm. McDaniel, Mason county, West Virginia, one shares;
H. R. Howard, Mason county, West Virginia, two shares;
Wm. Lyons, Mason county, West Virginia, one share;
W. E. Wetzel, Mason county, West Virginia, one share;
Andrew R. Barbee, Mason county, West Virginia, two shares;
John W. English, Mason county, West Virginia, two shares;
J. E. Clendenen, Mason county, West Virginia, five shares;
Edmund Sehon, Mason county, West Virginia, five shares;
E. Kimberling, Mason county, West Virginia, one share;
A. C. Vangilder, Mason county, West Virginia, two shares;
H. H. Swallow, Mason county, West Virginia, two shares;
John G. Storley, Mason county, West Virginia, one share;
John J. Fowler, Mason county, West Virginia, two shares;
Christian Storley, Mason county, West Virginia, one share;
S. G. Shaw, Mason county, West Virginia, one share;

J. B. Menager, Mason county, West Virginia, two shares ;
 S. C. Sisson, Mason county, West Virginia, two shares ;
 J. P. R. B. Smith, Mason county, West Virginia, two shares ;
 H. M. Daniels, Mason county, West Virginia, five shares ;
 D. S. Stevenson, Mason county, West Virginia, five shares ;
 George W. Tippet, Mason county, West Virginia, two shares ;
 D. S. Vanmetre, Mason county, West Virginia, one share ;
 W. J. Kenny, Mason county, West Virginia, one share ;
 Wm. H. Tomlinson, Mason county, West Virginia, five shares ;
 C. C. Miller, Mason county, West Virginia, ten shares ;
 C. B. Waggner, Jr., Mason county, West Virginia, one share ;
 James H. Couch, Jr., Mason county, West Virginia, two shares ;

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this fifteenth day of July, eighteen hundred and seventy-three.

(Signed,)

C. C. MILLER,
 P. C. EASTHAM,
 J. E. CLENDENEN,
 JOHN W. ENGLISH,
 H. B. HOWARD,
 I. W. STEENBERGEN,
 JOHN L. FOWLER,
 W. J. WETZEL,
 C. B. WAGGENER, JR.,
 H. M. DANIELS,
 GEO. W. TIPPET,
 J. P. R. B. SMITH,
 JOHN G. STORLY,
 D. S. STEVENSON,
 E. KIMBERLING,
 E. SEHOM,
 Wm. McDANIEL,
 Wm. H. TOMLINSON,
 JAMES B. MENAGER,
 P. S. LEWIS,
 J. CAPEHART,
 H. H. SWALLOW,
 ANDREW R. BARBER,
 S. C. SISSON,
 S. G. SHAW,
 A. C. VANGILDER,
 Wm. LYONS,
 D. S. VANMETRE,
 JAMES H. COUCH, JR.,
 CHRISTIAN STORLY,
 W. J. KENNY

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby de-

clared to be, from this date until the first day of January, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-fifth day of July, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE SOMES REFRIGERATING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Somes Refrigerating Company, with a capital of two hundred thousand dollars for the purpose of constructing, cooling, warming, ventilating and refrigerating buildings and apartments, the manufacture, use and sale of coolers, refrigerators and other articles of manufacture, the making of ice and ice machines, the preservation of food and other perishable substances, and for other purposes, which corporation shall keep its principal office or place of business at Washington, District of Columbia, and is to expire on the twenty-first day of July one thousand eight hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of two hundred thousand dollars as the capital thereof and have paid in the full amount of said subscription.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say:

Daniel E. Somes, of Washington, District Columbia, four hundred and eighty-two shares;

Frank C. Somes, of Washington, District Columbia, one thousand and four hundred and forty-three shares;

Lafayette C. Loomes, of Whashington, District Columbia, thirty-five shares;

John R. French; of Washington, District Columbia, twenty shares;

William B. Moses, of Washington, District Columbia, twenty shares;

Given under our and seals hands this twenty-first day of July, one thousand eight hundred and seventy-three.

(Signed.)

D. E. SOMES,	[SEAL]
FRANK C. SOMES,	[SEAL]
L. C. LOOMES,	[SEAL]
JOHN R. FRENCH,	[SEAL]
W. B. MOSES,	[SEAL]

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors, and assigns are hereby declared to be, from this date until the twenty-first day of July, eighteen hundred and ninety-three a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-ninth day of July, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

MARTINSBURG COOPER ACADEMY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Martinsburg Cooper Academy, for the purpose of establishing and maintaining an institution of learning for the education of youths and for teaching all the branches of useful information usually taught in similar institutions. The said institution to be located in or near the town of Martinsburg, and to be under the control and direction of the Presbytery of Winchester, old school; and for the purpose of receiving, holding, managing and applying a fund bequeathed by the late Maria Cooper for the establishment of such an academy, and

such other funds, money and property as may be hereafter devised, bequeathed or granted in aid thereof; which corporation shall have its principal office or place of business at Martinsburg, in the county of Berkeley, and State West Virginia, and is to expire on the first day of January, in the year one thousand nine hundred and seventy.

And for the purpose of founding said corporation we have subscribed the sum of two hundred and fifty dollars to the capital thereof, and have paid in on said subscriptions the sum of twenty-five dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to thirty-five thousand dollars in all.

The capital so subscribed is divided into shares of twenty-five dollars each, which are held by the undersigned respectively as follows: that is to say, by

Charles J. Faulkner, one share, Martinsburg, West Virginia;
John W. Pitzer, one share, Martinsburg, West Virginia,
August P. Shutt, one share, Martinsburg West Virginia;
J. L. W. Baker, one share, Martinsburg, West Virginia;
E. M. Shaffer, one share, Martinsburg West Virginia;
A. J. Thomas, one share, Berkeley county, West Virginia;
H. A. Riddle, one share, Martinsburg, West Virginia;
D. Boyd Faulkner, one share, Martinsburg, West Virginia;
C. J. Faulkner, Jr., one share, Martinsburg, West Virginia;
J. Q. A. Nadenbousch, one share, Martinsburg, West Virginia;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this fourteenth day of August eighteen hundred and seventy-three.

(Signed.)

CHARLES J. FAULKNER,
J. W. PETZER,
AUGUST P. SHUTT,
J. L. W. BAKER,
D. M. SHAFFER,
A. J. THOMAS,
H. A. RIDDLE,
E. BOYD FAULKNER,
C. J. FAULKNER JR.,
J. Q. A. NADENBOUSCH.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, nineteen hundred and seventy, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this nineteenth day August, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

ROCKY POINT TURNPIKE COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Rocky Point Turnpike Company for the purpose of constructing a turnpike or macademized road from Fort Spring Depot on the Chesapeake and Ohio railroad in Greenbrier county, to the town of Union in Monroe county, which corporation shall keep its principal office or place of business at Rocky Point, in the county of Monroe, and is to expire on the first day of July 1893.

And for the purpose of forming the said corporation we have subscribed the sum of seven hundred and seventy-five dollars to the capital thereof, and have paid in on said subscription the sum of seven-seven dollars and fifty cents, and desire the privilege of increasing the said capital, by sales of additional shares, from time to time, to fifteen thousand dollars in all.

The capital so subscribed is divided into shares of twenty-five dollars each which are held by the undersigned as follows, that is to say, one share by each of the following parties:

By Frank Hereford, ten shares;
By Samuel A. Clark, five shares;

By William Steele, four shares;
 By H. J. Kelley, four shares;
 By H. S. Shanklin, four shares;
 By Samuel W. Nickell two shares;
 By James W. McNeer, two shares;
 All residents of the county of Monroe, and State of West Virginia.

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands this fifteenth day] of August, eighteen hundred and seventy-three.

(Signed,)

FRANK HEREFORD,
 HENRY S. SHANKLIN,
 WM. STEELE,
 SAMUEL A. CLARK,
 JAMES W. MCNEER,
 SAMUEL W. NICKELL,
 H. J. KELLEY.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their succeesors and assigns, are hereby declared to be, from this date until the first day of July, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twentieth day of August, eighteen hundred and seventy-three.

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 G. S.
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C. HEDRICK,
 Secretary of the State.

WHEELING AND MATAMORAS TRANSPORTA TION COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Wheeling and Matamoras Transportation Company, for the purpose of carrying on a transportation business with steamboats, barges and flatboats, on the Ohio and Mississippi rivers and their tributaries, which corporation shall keep its principal office or place of business at the city of Wheeling, in the county of Ohio, and State of West Virginia, and is to expire on the twenty-first day of August, eighteen hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of thirty-five hundred dollars to the capital thereof, and have paid in on said subscriptions the sum of thirty-five hundred dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to thirty thousand dollars in all.

The capital so subscribed is divided into shares of five hundred dollars each, which are held by the undersigned respectively as follows: that is to say,

By Lewis Pope, of Matamoras, Washington county, Ohio, two shares;

By Abraham Cutler, of the same place, two shares;

By James Smith, of the same place, one share;

By George S. Johnson, of Tyler county, West Virginia, one share;
and

By Alfred C. Egarter, of Wheeling, West Virginia, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-first day of August, eighteen hundred and seventy-three.

(Signed,)

LEWIS POPE,
ABRAHAM CUTLER,
JAMES SMITH, by
ABRAHAM CUTLER,
Attorney in fact.
GEORGE S. JOHNSON,
A. C. EGARTER.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-first day of August, eighteen hundred and ninety-three a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this thirtieth day of August, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE WACOMAH MINING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Wacomah Mining Company, for the purpose of mining coal or any other mineral or substance found upon the lands hereafter to be acquired by them, to cut and ship timber, to manufacture iron, or any other product that can be manufactured from iron, wood, salt, stone or clay, to let, demise and lease mineral lands, and especially coal lands, at a rent or royalty; which corporation shall keep its principal office or place of business at Charleston, in the county of Kanawha, West Virginia, and is to expire on the twenty-eighth day of August, 1893.

And for the purpose of forming the said corporation we have subscribed the sum of one thousand dollars to the capital stock thereof and have paid in on said subscription the sum one hundred dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to one million dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say: by

James F. Patton, of Monroe county, West Virginia, two shares;
Allen T. Caperton, of Monroe county, West Virginia, two shares;
William H. Edwards, of Coalburg, West Virginia, two shares;
John P. Hale, of Charleston, West Virginia, two shares;

William A. Quarrier, of Charleston, West Virginia, one share;
 Jeremiah Morton, of Orange county, Virginia, one share,

And the capital to be hereafter sold, is to be divided into shares of the like amount.

Given under our hands this twenty-eighth day of August, eighteen hundred and seventy-three.

(Signed,)

JAMES F. PATTON,
 A. T. CAPERTON,
 WM. H. EDWARDS,
 J. P. HALE,
 WM. A. QUARRIER,
 JEREMIAH MORTON.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-eighth day of August, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this first day of September, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
 Secretary of the State.

THE PAINT CREEK MINING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Paint Creek Mining Company, for the purpose of mining coal or any other mineral or substance found upon the lands hereafter to be acquired by them, to cut and ship timber, to manufacture iron or

any other product that can be manufactured from iron, wood, salt, stone or clay, to let, demise or lease mineral lands and especially coal lands, at a rent or royalty; which corporation shall keep its principal office or place of business at Charleston, in the county of Kanawha, West Virginia, and is to expire on the twenty-eighth day of August, 1898.

And for the purpose of forming the said corporation we have subscribed the sum of one thousand dollars to the capital stock thereof, and have paid in on said subscription the sum of one hundred dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to one million dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say: by

James F. Patton, of Monroe county, West Virginia, two shares;
Allen T. Caperton, of Monroe county, West Virginia, two shares;
William Edwards, of Coalburg, West Virginia, two shares;
John P. Hale, of Charleston, West Virginia, two shares;
William A. Quarrier, of Charleston, West Virginia, one share;
Jeremiah Morton, of Orange county, Virginia, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-eighth day of August, eighteen hundred and seventy-three.

(Signed.)

JAS. F. PATTON,
A. T. CAPERTON,
WM. H. EDWARDS,
J. P. HALE,
WM. A. QUARRIER,
JEREMIAH MORTON.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-eighth day of August, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the

city of Charleston, this first day of September eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

HARDY COUNTY PRINTING AND PUBLISHING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of Hardy County Printing and Publishing Company. It shall be the object of the company to purchase and hold printing material and stock, the stock to be leased or otherwise used for the publication of a weekly newspaper, and for carrying on the business of printing generally, in the town of Moorefield, Hardy county, West Virginia. The said corporation shall keep its principal office or place of business in the said town of Moorefield, Hardy county, West Virginia, and said corporation is to expire on the first day of September, eighteen hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of eighteen hundred dollars to the capital stock thereof, and have paid in on said subscription the sum of one hundred and eighty dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to five thousand dollars in all.

The capital so subscribed is divided into shares of twenty-five dollars each, which are held by the undersigned respectively as follows, that is to say:

Thomas Maslin, eight shares, Hardy county West Virginia;
Jessie Fisher, six shares, Hardy county, West Virginia;
William Fisher, four shares, same place;
A. M. Wood, six shares, same place;

Wm. W. Harness, four shares, same place ;
 Daniel R. McNeill, ten shares, same place ;
 H. L. Hoover, four shares, same place ;
 Wm. M. Randolph, four shares, same place ;
 George T. Williams, six shares, same place ;
 A. M. Inskup, four shares, same place ;
 John Ligget, two shares, same place ;
 Edward Williams, four shares, Grant county West Virginia ;
 Joseph Vanmeter, four shares, Hardy county West, Virginia ;
 George Fox, two shares, same place ;
 H. S. Carr, two shares, same place ;
 J. W. Duffey, two shares, same place ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twelfth day of August, eighteen hundred and seventy-three.

(Signed,)

THOMAS MASLIN,
 JESSIE FISHER,
 WILLIAM FISHER,
 A. M. WOOD,
 Wm. W. HARNESS,
 DANIEL R. MCNEIL,
 H. L. HOOVER,
 Wm. M. RANDOLPH,
 GEORGE T. WILLIAMS,
 A. M. INSKUP,
 JOHN LIGGET,
 EDWARD WILLIAMS,
 JOSEPH VANMETER,
 GEORGE FOX,
 H. S. CARR,
 J. W. DUFFEY,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of September, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this sixth day of September eighteen hundred and seventy-three.

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 G. S.
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C. HEDRICK,
 Secretary of the State.

FIRST MUTUAL STORE OF PALATINE.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following.

The undersigned agree to become a corporation by the name of First Mutual Store of Palatine for the purpose of carrying on a general merchandise business in the town of Palatine, county of Marion, and State of West Virginia, and for the purpose of acquiring real estate sufficient for houses and store-rooms for such business, which corporation shall keep its office or place of business at Palatine in the county of Marion, and is to expire on the fifth day of September, 1893.

And for the purpose of forming the said corporation we have subscribed the sum of five hundred and fifty dollars, to the capital thereof; and have paid in on said subscription the sum of fifty-five dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to twenty thousand dollars in all.

The capital so subscribed is divided into shares of fifty dollars each, which are held by the undersigned respectively as follows : that is to say, by

J. Clark McKinney, Marion county, one share ;
P. T. Barnes, Marion county, one share ;
George Adams, same place, one share ;
T. H. Barnes, same place, one share ;
Wm. H. B. Minnear, same place, one share ;
James McElfrish, same place, one share ;
E. M. Austin, same place, one share ;
Thomos T. Hoult, same place, one share ;
John E. Dodd, same place, one share ;
Eli N. Hoult, same place, one share ;
A. B. Wilson, same place, one share ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this 5th day of September, 1873.

(Signed.)

J. C. McKENNY,
PETER T. BARNES,
GEORGE ADAMS,
THOMAS H. BARNES,
W. H. B. MINNEAR,
JAMES McELFRISH,
E. M. AUSTIN,
THOMAS T. HOULT,
JOHN E. DODD,
ELI N. HOULT,
A. B. WILSON,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the fifth day of September, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twentieth day of September, eighteen hundred and seventy-three

{ G. S. }

C. HEDRICK,
Secretary of the State.

THE KANAWHA IRON AND COAL COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Kanawha Iron and Coal Company, for the purpose of mining coal, iron ore and other minerals, and getting out lumber on any lands now owned by the said corporation in the county of Kanawha, State

of West Virginia or lands hereafter to be acquired by said corporation, and to ship and vend coal and other minerals, and to smelt and rework said iron ores and to ship and to vend the products thereof; to saw and manufacture said lum'ber, and to dispose of the same and to do all other things necessary thereto; to construct the necessary railroads, farm roads and other roads from their lands to the most convenient points of shipment, on the Chesapeake and Ohio railroad, or the Kanawha river, for the purpose of bringing out their coal, ores and lumber, which corporation shall keep its principal office or place of business at the city of Charleston, in said County of Kanawha, and is to expire on the first day of September, A. D., eighteen hundred and ninety-three.

And for the purpose of forming said corporation we have subscribed the sum of one hundred and ten thousand dollars to the capital thereof, and have paid in on said subscriptions the sum of thirty thousand dollars and desire the privilege of increasing the said capital by sales of additional shares to one million of dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say:

By John Zimmerman, of Wooster, Ohio, one hundred shares;

By David Robinson, of Wooster, Ohio, sixty-two and one half shares;

By James S. Hollowell, of Wooster, Ohio, one hundred shares;

By James C. Jacobs of Wooster, Ohio, fifty shares;

By Ephram Quinby, Jr., of Wooster, Ohio, one hundred shares;

By John McSweeney, of Wooster, Ohio, fifty shares;

By David Q. Liggett of Wooster, Ohio, fifty shares;

By George B. Smith & May, of Wooster, Ohio, fifty shares;

By Thomas S. Johnson, of Wooster, Ohio, fifty shares;

By Ira H. Bates, of Wooster, Ohio, twenty-five shares;

By Edward P. Bates, of Wooster, Ohio, twenty-five shares;

By Jacob R. Zimmerman, of Wooster, Ohio, twenty-five shares;

By J. Deroy Larwill, of Wooster, Ohio, twenty-five shares;

By Lucas Flattery, of Wooster, Ohio, twenty-five shares;

By George P. Emerich, of Wooster, Ohio, twenty-five shares;

By William Baker, of Toledo, Ohio, twenty-five shares;

By Curtis V. Hard, of Wooster, Ohio, twelve and one half shares;

By James P. Harper, of Indianapolis, Indiana, one hundred shares;

By John C. Larwill, of Loudenville, Ohio, fifty shares;

By James Todd, of Shreve, Ohio, fifty shares;

By Nicholas Fitzhugh, of Charleston, West Virginia, one hundred shares

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands the 26th day of August A. D., 1873.

JOHN ZIMMERMAN,
NICHOLAS FITZHUGH,
JAMES TODD,
By IRA H. BATES,
IRA H. BATES,
EDWARD P. BATES,
D. ROBINSON JR.,
WILLIAM BAKER,
By his Attorney,
D. ROBINSON, JR.,
D. Q. LIGGETT,
E. QUINDY, JR.,
JOHN C. LARWILL,
GEORGE P. EMERICH,
JOHN McSWEENEY,
JAMES S. HOLLOWELL,
LUCAS FLATTERY,
JAMES C. JACOBS,
J. R. ZIMMERMAN,
C. B. SMITH & MAY,
T. S. JOHNSON,
LEROY J. LARWILL,
FR. L. J. LARWILL,
CURTIS V. HARD,
J. P. HARPER,
By N. FITZHUGH, Agent.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of September, eighteen hundred and ninety-three a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-third day of September eighteen hundred and seventy-three.

G. S.

C. HEDRICK.
Secretary of the State.

WHEELING CENTRIPETAL POWER COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the

proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following :

We the undersigned agree to become a corporation by the name of the Wheeling Centripetal Power Company, for the purpose of manufacturing and mining, which corporation shall keep its principal office in Wheeling, Ohio county, West Virginia, also an office at their works, and is to expire on the ninth day September, eighteen hundred and ninety-three.

And for the purpose of forming said corporation, we have subscribed the sum of twenty-five thousand dollars to the capital thereof, and have paid in on said subscription the sum of twenty-five thousand dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to five hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say : by

Thomas Hughes, fifty shares, \$5,000 ;
John Reid, Sr., fifty shares, \$5,000 ;
J. H. Hobbs, fifty shares, \$5,000 ;
J. D DuDois, fifty shares, \$5,000 ;
Morgan L. Ott, fifty shares, \$5,000 ;
All citizens of Ohio county, West Virginia.

And the capital to be hereafter sold is to be divided into shares of like amount.

Given under our hands and seals this tenth day of September, eighteen hundred and seventy-three.

Signed :

THOMAS HUGHES,
J. H. HOBBS,
M. L. OTT,
J. D. DuBOIS,
JOHN REED, Sr.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the ninth day of September, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the
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city of Charleston, this seventh day of October, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State

COLLIER COAL AND COKE COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following.

The undersigned agree to become a corporation by the name of The Collier Coal and Coke Company, for the purpose of mining and shipping coal and manufacturing and shipping coke; which corporation shall keep its principal office or place of business at Collier's Station, in the county of Brooke, and is to expire on the twelfth day of September, A. D. one thousand eight hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of five thousand dollars to the capital thereof, and have paid in on said subscriptions the sum of five hundred dollars; and desire the privilege of increasing the said capital by sales of additional shares from time to time to three hundred thousand dollars in all.

The capital so subscribed is divided into shares of fifty dollars each, which are held by the undersigned respectively as follows, that is to say: by

C. H. Love, of the city of Pittsburgh, Pennsylvania, twenty shares;
George B. Hill, of the city of Pittsburgh, Pennsylvania, twenty shares;

A. W. Erwin, of Alleghany city, Pennsylvania, twenty shares;
James Hopkins, of the city of Pittsburgh, Pennsylvania, twenty shares;

F. M. Love, of Edgeworth, Alleghany county Pennsylvania, twenty shares;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twelfth day of September, A.D., eighteen hundred and seventy-three.

(Signed,)

C. H. LOVE,
GEORGE B. HILL,
A. W. ERWIN,
JAMES H. HOPKINS,
B. M. LOVE.

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the fourth day of September, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, in the city of Charleston, this sixteenth day of October, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State'



PEOPLE'S BUILDING AND LOAN ASSOCIATION.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

We the undersigned agree to become a corporation by the name the People's Building and Loan Association, for the purpose of accumulating a fund by the members thereof to enable the stock holders to build or purchase for themselves, respectively, dwelling houses or lots, or for repairing houses, and for such other purposes as may lawfully be carried out by homestead and building associations formed under the laws of the State of West Virginia; which corporation shall keep its principal office or place of business at the city of Parkersburg, in the county of Wood, State aforesaid, and is to expire on the thirteenth day of October, eighteen hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of one thousand five hundred dollars to the capital

thereof, and have paid in on said subscription the sum of one hundred and fifty dollars, and desire the privilege of increasing the said capital by sales of additional shares, from time to time, to three hundred thousand dollars.

The capital so subscribed is divided into shares of three hundred dollars each, which are held by the undersigned as follows :

Walter S. Sands, of the city of Parkersburg, Wood county aforesaid, one share ;

R. P. Davis, of the same place, one share ;

Henry Kramer, of the same place, one share ;

M. J. Weinberg, of the same place, one share ; and

Patrick Clark, of the same place, one share ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this thirteenth day of October, in the year one thousand eight hundred and seventy-three.

(Signed,)

WALTER S. SANDS,
PATRICK CLARK,
HENRY KRAMER,
M. J. WEINBERG,
BEZIN F. DAVIS.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the thirteenth day of October, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State ,
City of Charleston, this seventeenth day of October, eighteen hundred and seventy-three. |

G. S.

C. HEDRICK,
Secretary of the State.

MONONGAHELA GAS COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby

certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me ; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Monongahela Gas Company, for the purpose of mining, raising producing, selling and shipping coal, and for the further purpose of manufacturing and vending coke in Harrison county, in the State of West Virginia, which corporation shall keep its principal office or place of business at the city of Baltimore, in the State of Maryland, and is to expire on the twentieth day of October, in the year eighteen hundred and ninety-three.

And for the purpose of forming the said corporation, we have subscribed the sum of one million dollars to the capital thereof, and have paid in on said subscriptions the sum of one million dollars, the whole amount thereof.

The capital so subscribed is divided into shares of ten dollars each which are held by the undersigned respectively as follows, that is to say :

By Alexander Shaw, of Baltimore city, in the State of Maryland, five hundred shares ;

By George J. Appold, of Baltimore city, in the State of Maryland, five hundred shares ;

By William F. Larrabee, of Baltimore city, in the State of Maryland, five hundred shares ;

By Thomas Gemmell, of Baltimore city, in the State of Maryland, five hundred shares ;

By Charles J. Baker, of Baltimore city, in the State of Maryland, five hundred shares ;

By Edward Roberts, of Baltimore city, in the State of Maryland, five hundred shares ;

By Alexander Robinson, of Baltimore city, in the State of Maryland, five hundred shares ;

By James W. Hewlett, of Baltimore city, in the State of Maryland, five hundred shares ;

By John A. Hambleton, of Baltimore city, in the State of Maryland, five hundred shares ;

By Henry G. Davis, of Piedmont, in Mineral county, in the State of West Virginia, ninety-five thousand five hundred shares ;

Given under our hands this 24th day of October, in the year
 •eighteen hundred and seventy-three.

Teste :

JOHN T. MADDOX.

ALEX. SHAW,
 GEORGE J. APPOLD,
 W. F. LARBABEE,
 THOMAS GEMMELL,
 CHARLES J. BAKER,
 EDWARD ROBERTS,
 ALM. ROBINSON,
 JAS. W. HEWLETT,
 JNO. A. HAMBLETON,
 HENRY G. DAVIS.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns are hereby declared to be, from this date until the 20th day of October, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this thirtieth day of October, eighteen hundred and seventy-three.

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 G. S.
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C. HEDRICK,
 Secretary of the State.

KANAWHA POTTERY COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Kanawha Pottery Company, for the purpose of manufacturing and selling pottery and any and all articles made from clay or earth with or without the admixture of other substances therewith, which corporation shall keep its principal place of business at West Charleston, in the county of Kanawha, State of West Virginia, and is to ex-

re on the twenty-eighth day of October, A. D., eighteen hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of one hundred and twenty-five dollars to the capital thereof, and have paid in on said subscription the sum of twelve and fifty one-hundredth dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time to one hundred and fifty thousand dollars in all.

The capital so subscribed is divided into shares of twenty-five dollars each which are held by the undersigned respectively as follows, that is to say:

By Benj. H. Smith, Charleston, Kanawha county, West Virginia, one share;

By W. A. Quarrier, of Charleston, Kanawha county, West Virginia, one share;

By E. F. Dunne, of West Charleston, Kanawha county, West Virginia, one share;

By P. H. Gallagher, of Charleston, Kanawha county, West Virginia, one share;

By J. B. Walker, of West Charleston, Kanawha county, West Virginia, one share;

And the capital hereafter to be sold is to be divided into shares of like amount.

Given under our hands and seals this twenty-eighth day of October one thousand eight hundred and seventy-three¹

(Signed,)

BENJ. H. SMITH,
WM. A. QUARRIER,
E. F. DUNNE,
P. H. GALLAGHER,
J. BRISBEN WALKER

Wherefore, the corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-eighth day of October, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this thirty-first day of October, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE GUYANDOTTE RIVER MANUFACTURING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Guyandotte River Manufacturing Company, for the purpose of erecting saw mills and wood working machinery, and the manufacture and selling of flat-boats, lumber, staves, hoop-poles, tan-bark and other wooden materials, and for the buying and leasing of timber lands, lying on the waters of the Guyandotte river, and its tributaries, and for the building of roads and tramways and other improvements necessary for conducting the business aforesaid in and on said waters, which corporation shall keep its principal office or place of business in Guyandotte, Cabell county, West Virginia, with a branch office in Lincoln county, West Virginia, and is to expire on the twenty-ninth day of October, eighteen hundred and ninety-three, twenty years after the date of its certificate of incorporation.

And for the purpose of forming the said corporation we have subscribed the sum of six thousand five hundred dollars to the capital stock thereof, and have paid in on the said subscription the sum of one thousand dollars; and desire the privilege of increasing the said capital, by the sale of additional shares from time to time to one hundred and fifty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is say:

Samuel W. Knott, of Huntington, West Virginia, fifty shares;
John Chapman, of Lincoln county, West Virginia, three shares;
Alonzo F. Ketchum, of Lincoln county, West Virginia five shares;
Samuel Atkins, of Lincoln county, West Virginia, two shares;
Alexander Watson, of Lincoln county, West Virginia, five shares;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-ninth day of October, eighteen hundred and seventy-three.

Signed.

SAMUEL W. KNOTT,
JOHN CHAPMAN,
A. F. KETCHUM,
SAMUEL ATKINS,
ALEXANDER WATSON,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-ninth day of October eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this sixth day of November, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE CITIZENS' BUILDING ASSOCIATION OF MARTINSBURG.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of The Citizens Building Association of Martinsburg, for the purpose of accumulating money to be loaned among its members for the purchase of land or houses, or for building or repairing the same or any other legitimate purpose, which corporation shall keep its principal office or place of business at Martinsburg in the county of Berkeley, State of West Virginia, and is to expire on the first day of January, 1893.

And for the purpose of forming the corporation we have subscribed the sum of one thousand six hundred and fifty dollars to the capital stock thereof, and have paid in on said subscription the sum of one hundred and sixty-five dollars, and desire the privilege of increasing said capital by sales of additional shares to the sum of one hundred and fifty thousand dollars.

The capital so subscribed is divided into shares of one hundred and fifty dollars each which are held by the undersigned respectively as follows ;

E. S. Troxell, of Martinsburg, West Virginia, one share ;
 George F. Rutherford, one share ;
 George W. Tabler, one share ;
 John R. Bateman, one share ;
 Hugh M. Clippenger, one share ;
 Jacob Eversole, one share ;
 John Kindle, one share ;
 George S. Gardner, one share ;
 M. J. C. Hoffman, one share ;
 John Fitz, one share ;
 And Jacob P. Swartz, one share ;
 All of the city of Martinsburg, West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this seventeenth day of November, eighteen hundred and seventy-three.

(Signed.)

E. S. TROXELL,	[SEAL]
GEO. F. RUTHERFORD,	[SEAL]
G. W. TABLER,	[SEAL]
JOHN R. BATEMAN	[SEAL]
H. M. CLIPPENGER,	[SEAL]
JACOB EVERSOLE,	[SEAL]
JOHN W. KINDLE,	[SEAL]
M. J. C. HOFFMAN,	[SEAL]
GEORGE S. GARDNER,	[SEAL]
JOHN FITZ	[SEAL]
JACOB P. SWARTZ,	[SEAL]

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of January, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this twenty-second day of November, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

NATIONAL WATER METER COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the National Water Meter Company, for the purpose of selling corporation and territorial rights and to manufacture the said meters, which corporation shall keep its principal office or place of business at Charleston, in the county of Kanawha, and is to expire on the eighth day of November, A. D., one thousand eight hundred and ninety-two.

And for the purpose of forming the said corporation, we have subscribed the sum of five hundred dollars to the capital thereof, and have paid in on said subscription the said sum of fifty dollars, and desire the privilege of increasing said capital by sales of additional shares, from time to time, to one million dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, to-wit:

E. R. Morgan, of Charleston, Kanawha county, West Virginia, one share;

Wm. Gramm, of Charleston, Kanawha county, West Virginia, one share;

N. Mason, of Charleston, Kanawha county, West Virginia, one share;

M. D. Chilton, of Charleston, Kanawha county, West Virginia, one share;

W. B. Pack, of St. Albans, Kanawha county, West Virginia, one share;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this twenty-fifth day of November, eighteen hundred and seventy-three.

(Signed.)

E. B. MORGAN,
M. D. CLINTON,
W. B. PACK,
WM. GRAMM,
N. MASON,

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be from this date until the eighth day of November, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this twenty-sixth day of November, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

KANAWHA VALLEY PLANING MILLS.

I, Charles Hedrick, Secretary of the State of West Virginia, here by certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me, which agreement is in the words and figures following:

The undersigned agree to become a corporation by the name of the Kanawha Valley Planing Mills, for the purpose of manufacturing all manner of wood work, by hand or machinery, for manufactnrng brick, and purchasing and selling all building material, contracting to erect and erecting houses and other structures, and securing the saw, building material, working and using the same for sale or for use in buildings contracted, and all other business and manufacture legitimately connected with building or wood working, brick work or stone

work, which corporation shall keep its principal office of business at Charleston, in Kanawha county, West Virginia, and is to expire on the twenty-sixth, day of November, eighteen hundred and ninety-three.

And for the purpose of forming said corporation we have subscribed the sum of one thousand dollars to the capital thereof, and have paid in on said subscriptions the sum of one hundred dollars, and desire the privilege of increasing said capital, by sales of additional shares, from time to time, to fifty thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each, which are held by the undersigned respectively as follows, that is to say :

William M. Ewing, three shares ;

James King, three shares ;

James T. Hoback, one share ;

John D. Baines, one share ;

James C. Poague, one share ;

W. P. Ewing, one share ;

All of said parties corporators being residents of Charleston, Kanawha county, West Virginia.

And the capital to be hereafter sold, is to be divided into shares of the like amount.

Given under our hands this twenty-sixth day of November, eighteen hundred and seventy-three.

(Signed.)

W. M. EWING,
JAMES KING,
J. T. HOBACK,
J. D. BAINES,
J. C. POAGUE,
W. P. EWING.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the twenty-sixth day of November, eighteen hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the City of Charleston, this first day of December, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following:

The undersigned agree to become a corporation, by the name of the Standard Printing Company for the purpose of printing and publishing newspapers and of carrying on the printing and publishing business generally, which corporation shall keep its principal office or place of business at Wheeling, West Virginia, and is to expire on the first day of December, eighteen hundred and ninety-three.

And for the purpose of forming the said corporation we have subscribed the sum of six thousand dollars to the capital stock thereof, and have paid in on said subscriptions, the sum of thirty-three hundred dollars; and desire the privilege of increasing the said capital by sales of additional shares, from time to time to one hundred thousand dollars in all.

The capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say; by

James F. Carroll, twenty-nine shares;
Chester D. Hubbard, ten shares;
Dana L. Hubbard, ten shares;
Crawford H. Booth, one share;
William P. Hubbard, ten shares;
All of the city of Wheeling, and State of West Virginia.

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this first day of December eighteen hundred and seventy-three.

(Signed,)

JAMES F. CARROLL.
CHESTER D. HUBBARD,
DANA L. HUBBARD,
CRAWFORD H. BOOTH
Wm. P. HUBBARD.

Wherefore, The corporators named in the said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day of December, eighteen

hundred and ninety-three, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this fifth day of December eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

THE NAIL CITY BREWING COMPANY.

I, Charles Hedrick, Secretary of the State of West Virginia, hereby certify that an agreement duly acknowledged and accompanied by the proper affidavits, has been this day delivered to me; which agreement is in the words and figures following :

The undersigned agree to become a corporation by the name of The Nail City Brewing Company, for the purpose of manufacturing and selling of malt and beer, which corporation shall keep its principal office or place of business at Wheeling, in the county of Ohio, and is to expire on the first day of December, eighteen hundred and ninety-three, if not sooner dissolved.

And for the purpose of forming said corporation we have subscribed the sum of eight thousand dollars to the capital thereof, and have paid in on said subscription the sum of eight hundred dollars, and desire the privilege of increasing the said capital by sales of additional shares from time to time, to one hundred thousand dollars in

the capital so subscribed is divided into shares of one hundred dollars each which are held by the undersigned respectively as follows, that is to say :

By Frank Walter, of Ohio county, twenty shares ;
Chris Siebke, of Wheeling five shares ;
Gregory Warner, of Wheeling, ten shares ;
Cletus Hanser, of Wheeling, five shares ;
John Butterfield, of Wheeling, ten shares ;

Henry Michel of Wheeling, ten shares ;
Charles D. Ritter, of Wheeling, ten shares ;
Fredrick C. Vaas, of Wheeling, ten shares ;

And the capital to be hereafter sold is to be divided into shares of the like amount.

Given under our hands this thirteenth day of December, A. D., eighteen hundred and seventy-three.

(Signed.)

FRANK WALTER,
CHRIS SIEBKE,
GREGORY WARNER,
CLETUS HANSER,
JOHN BUTTERFIELD,
HENRY MICHEL,
CHARLES D. RITTER,
F. C. VAAS.

Wherefore, The corporators named in said agreement, and who have signed the same, and their successors and assigns, are hereby declared to be, from this date until the first day December, eighteen hundred and ninety-two, a corporation by the name and for the purpose set forth in said agreement.

Given under my hand and the Great Seal of the said State, at the city of Charleston, this seventeenth day of December, eighteen hundred and seventy-three.

G. S.

C. HEDRICK,
Secretary of the State.

OFFICE NEW DOMINION OIL COMPANY, No. 10, MERCHANTS
EXCHANGE, PHILADELPHIA, July, 11th 1873.

I, H. A. Stiles, President of the New Dominion Oil Company, a corporation created under the laws of the State of West Virginia, do certify that at a general meeting of the stock holders of said company held at their place of business, in the city of Philadelphia, Pennsylvania, the 11th day of July, 1873, a majority of the stock was represented, and voted for, and unanimously adopted the following resolution.

Resolved, That we the stockholders of "The New Dominion Oil Company" of West Virginia, in general meeting assembled, do hereby agree to discontinue the business of this organization."

In witness whereof I have hereunto set my hand and the common seal of said company, this eleventh day of July, 1873.

SEAL.

A copy teste :

H. A. STILES,
President.

C. HEDRICK,
Secretary of State.

DISSOLUTION OF THE WEST VIRGINIA COAL AND LIME COMPANY.

OFFICE WEST VIRGINIA COAL LIME COMPANY,
No. 10, MERCHANTS EXCHANGE,
PHILADELPHIA, March 23, 1872.

I, Lewis Cooper, President of "The West Virginia Coal and Lime Company" a corporation created under the laws of the State of West Virginia, do certify that at a general meeting of the stockholders of said company held at their place of business in the city of Philadelphia, Penn., the 23d day of March, 1872, at which meeting a majority of the stock was represented and voted for, and unanimously adopted the following resolution :

Resolved, That we, the stockholders of "The West Virginia Coal and Lime Company" of West Virginia, in general meeting assembled, do hereby agree to discontinue the business of this organization.

In witness whereof I have hereunto set my hand and the common seal of said company this twenty-third day of March, 1872.

SEAL.

Attest :

A copy teste :

LEWIS COOPER,
President.
THOS. J. MCGILL,
Secretary.

C. HEDRICK,
Secretary of State.

**"NATIONAL SAVINGS BANK OF WHEELING." CHANGE OF
NAME TO "COMMERCIAL BANK."**

Declaration of change of name of the "National Savings Bank of Wheeling" to "Commercial Bank."

I, C. Hedrick, Secretary of the State of West Virginia, hereby certify that Thomas H. List, President of the "National Savings Bank of Wheeling," a corporation formed under the laws of said State, has in the manner prescribed by said laws, certified to me that at a general meeting of the stockholders of said bank, held at their Banking House in the city of Wheeling in said State, on the first day of April, 1873, the following resolution was adopted.

"That the name of this Bank be changed from the "National Savings Bank of Wheeling" to "Commercial Bank;" said change to take effect on and after May 1, 1873."

Wherefore, I do hereby declare the proposed change of name authorized, and that the said corporation is to be on and after the first day of May, 1873, known by the name of "Commercial Bank."

Given under my hand and the Great Seal of the said State, at the city of Charleston, this fourteenth day of April, A. D., eighteen hundred and seventy-three,

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G. S.
}

C. HEDRICK,
Secretary of State.

**FRANKLIN GLASS COMPANY—CHANGE OF NAME TO
WHEELING WINDOW GLASS COMPANY.**

Declaration of the change of name of the Franklin Glass Company.

I, John M. Phelps, Secretary of the State of West Virginia, hereby certify that the President of the Franklin Glass Company under his signature and the common Seal of the corporation of said company, held July 29, 1872, the following resolution was adopted, viz:

Resolved, That the name of the company be changed from the present name to the Wheeling Window Glass Company and that the President see that proper steps be taken to make such changes.

Now therefore, I, by virtue of the statute in such case made and provided, hereby certify and declare that the said company is hereafter to be known as the Wheeling Window Glass Company.

Given under my hand and the Great Seal of the said State at the city of Charleston, this twenty-eighth day of August, eighteen hundred and seventy-two.

G. S.

[Signed]

JNO. M. PHELPS,
Secretary of State.

CLARKSBURG MUTUAL INSURANCE COMPANY—CHANGE OF NAME TO THE BANK OF WEST VIRGINIA AT CLARKSBURG.

Declaration of change of name of the "Clarksburg Mutual Insurance Company" to the "Bank of West Virginia at Clarksburg."

I. John M. Phelps, Secretary of the State of West Virginia, hereby certify that T. S. Spates, President of the Clarksburg Mutual Insurance Company, a corporation formed under the laws of said State, has in the manner thereby prescribed, certified to me that at a general meeting of the stockholders of said company, held at the office of said company in Clarksburg, West Virginia, on the thirteenth day of January, 1873, the following resolution was unanimously adopted:

"WHEREAS, the stockholders of the "Clarksburg Mutual Insurance Company" in annual meeting assembled on the thirteenth day of January, 1873, being desirous of changing the name of said company,

Therefore be it resolved, That hereafter it be known as the "Bank of West Virginia at Clarksburg."

Wherefore, I do hereby declare the proposed change of name authorized and accomplished in law, and that the said corporation is hereafter to be known as the "Bank of West Virginia at Clarksburg."

Given under my hand and the Great Seal of the said State at the

city of Charleston this twentieth day of January, eighteen hundred and seventy-three.

{
G. S.
}

JNO. M. PHELPS,
Secretary of State.

DISSOLUTION OF THE MASON COUNTY PRINTING AND PUBLISHING COMPANY.

Resolved by the stockholders of the Mason County Printing and Publishing Company, that the business of the said corporation, "The Mason County Printing and Publishing Company," is hereby discontinued; and that the property and assets of the said corporation be applied: First, applied to the payment of the debts against the same, and the residue, after paying the debts and liabilities thereof, be divided among the stockholders of said corporation according to their respective interests, and that this resolution be published and certified according to law.

I, George W. Moredock, President of the Mason County Printing and Publishing Company, hereby certify that the foregoing resolution was unanimously adopted at a meeting of the stockholders of said corporation held at their office in the town of Clifton, Mason county, West Virginia, on the eighth day of December, 1873.

Given under my hand and the common seal of said corporation, this eighth day of December, 1873.

{
SEAL
}

G. W. MOREDOCK,

President Mason Co. Printing & Publishing Co.

To Secretary of State Charleston, W. Va.

A copy teste:

C. HEDRICK,
Secretary of State.

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LIST OF COMMISSIONERS
AND
TIMES FOR HOLDING EACH OF THE TERMS
OF THE
DIFFERENT CIRCUIT COURTS.

LIST OF COMMISSIONERS.

In other States, appointed by the Executive of, West Virginia, from the second day of January to the thirty-first day of December, 1872, with the residence and date of appointment of each Commissioner; also the date when evidence of their qualification was filed. The term of office of Commissioners is for two years.

States.	Names of Commissioners.	Residence.	Date of Appointment.	When evidence of qualification filed.
New York.....	Fred. R. Anderson...	New York City.....	February 5, 1872.....	February 19, 1872
"	Charles Nettleton...	"	" 8, 1872.....	" 29, 1872
"	George W. Colles....	"	" 21, 1872.....	March 11, 1872
"	Charles F. Wells.....	"	" 24, 1872.....	" 11, 1872
Kentucky.....	W. W. Helm.....	Louisville	March 15, 1872.....	.....
Pennsylvania....	Henry E. Hindman....	Philadelphia	" 15, 1872.....	April 9, 1872
California.....	N. P. Smith.....	San Francisco.....	" 15, 1872.....	May 15, 1872
New York.....	Charles J. Bushnell..	New York City.....	April 1, 1872.....	April 26, 1872
"	Walter B. Wines....	"	" 2, 1872.....	.....
Dist. Columbia..	R. H. Marsh.....	Washington, D. C..	" 13, 1872.....	.....
Minnesota	Charles McC. Reeve..	Minneapolis.....	" 9, 1872.....	May 28, 1872
New York.....	James M. Varnum....	New York City.....	" 22, 1872.....	.....
"	Arthur W. Knapp....	"	" 25, 1872.....	June 17, 1872
Pennsylvania....	Kinley W. Tener....	Philadelphia	" 26, 1872.....	May 11, 1872
"	John Russell.....	"	" 30, 1872.....	" 20, 1872
"	Theodore D. Rand...	"	May 9, 1872.....	" 23, 1872
Louisiana.....	Oren G. Brayden....	New Orleans.....	" 9, 1872.....	June 29, 1872
New York.....	Philip L. Wilson....	New York City.....	" 9, 1872.....	" 10, 1872
Pennsylvania....	Edward Shippen....	Philadelphia	" 9, 1872.....	" 10, 1872
"	Joseph Frankish....	"	" 13, 1872.....	" 5, 1872
"	Samuel L. Taylor....	"	June 27, 1872.....	.....
Massachusetts....	Otis Gray Randall...	Boston	August 26, 1872.....	September 23, 1872
Pennsylvania....	J. Paul Diver.....	Philadelphia	" 26, 1872.....	.....
New York.....	Thomas Kilvert.....	New York City.....	" 28, 1872.....
Maryland.....	W. W. Latimer.....	Baltimore.....	" 30, 1872.....	September 15, 1872

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Virginia.....	John S. Rady.....	Richmond.....	" 30, 1872....
Pennsylvania.....	Joshua Spring.....	Philadelphia.....	" 30, 1872....	October 30, 1872
New York.....	Francis P. Burk.....	New York City.....	October 2, 1872....	.....
"	Charles Edgar Mills	"	" 2, 1872....	.....
Missouri.....	C. D. Green, Jr.....	St. Louis.....	" 21, 1872....	November 7, 1872
Pennsylvania.....	J. H. Wheeler.....	Philadelphia	" 26, 1872....	" 12, 1872
Virginia.....	Henry T. Wickham.	Richmond.....	November 6, 1872....	" 21, 1872
Missouri.....	John R. Boas.....	St. Louis.....	" 13, 1872....	December 26, 1872
Illinois.....	J. Milton Oliver.....	Chicago	December 16, 1872....	.....
Maryland.....	Gilmer S. Hamill....	Oakland.....	" 23, 1872....	.....
California.....	Edward Cadwalader	Sacramento	" 23, 1872....	.....

TIMES FOR HOLDING EACH OF THE TERMS

—OF—

THE DIFFERENT CIRCUIT COURTS.

TERMS OF CIRCUIT COURTS.

FIRST JUDICIAL CIRCUIT—THAYER MELVIN, JUDGE.

Counties.	Commencement of Terms.
Brooke	Second Monday in March and second Monday in September.
Hancock	First Monday in March and first Monday in September.
Ohio	Third Monday in April and third Monday in October.
Marshall	Fourth Monday in March and fourth Monday in September.

SECOND JUDICIAL CIRCUIT—C. S. LEWIS, JUDGE.

Counties.	Commencement of Terms.
Doddridge.....	Tenth day of May and tenth day of November.
Harrison	Twenty-first day of May and twenty-first day of November.
Marion.....	Seventeenth day of April and seventeenth day of October.
Monongalia.....	Tenth day of March and tenth day of September.
Taylor	First day of March and first day of September.
Wetzel	First Tuesday in April and first Tuesday in October.

THIRD JUDICIAL CIRCUIT—JNO. BLAIR HOGE, JUDGE.

Counties.	Commencement of Terms.
Berkeley.....	Second Tuesday in May and Fourth Tuesday in November.
Jefferson	Fourth Tuesday in March and Third Tuesday in October.
Morgan.....	First Tuesday in May and second Tuesday in September.

FOURTH JUDICIAL CIRCUIT—J. W. F. ALLEN, JUDGE.

Counties.	Commencement of Terms.
Grant.....	Third Tuesday in March and third Tuesday in September.
Hardy.....	First Tuesday in March and first Tuesday in September
Mineral.....	Second Tuesday in May and second Tuesday in November.
Pendleton.....	First Tuesday in April and first Tuesday in October.
Hampshire.....	Third Tuesday in April and third Tuesday in October.

FIFTH JUDICIAL CIRCUIT—JAMES M. JACKSON, JUDGE.

Counties.	Commencement of Terms.
Calhoun.....	Third Monday in May and first Monday in October.
Pleasants.....	First Monday in April and third Monday in November.
Ritchie.....	Fourth Monday in April and third Monday in October.
Tyler.....	Tuesday after the second Monday in April, and Tuesday after the first Monday in November.
Wirt.....	Tuesday after the first Monday in May, and Tuesday after the second Monday in October.
Wood.....	First Monday in June and first Monday in December.

SIXTH JUDICIAL CIRCUIT—JOHN BRANNON, JUDGE.

Counties.	Commencement of Terms.
Barbour.....	Ninth day of May and the ninth day of November.
Gilmer.....	Eleventh day of March and eleventh day of September.
Lewis.....	First day of March and first day of September.
Preston.....	Seventh day of April and seventh day of October.
Randolph.....	Twenty-third day of April and twenty-third day of October.
Tucker.....	Second day of May and second day of November.
Upahur.....	Twenty-second day of March and twenty-second day of November.
Webster.....	Twenty-sixth day of May and twenty-sixth day of September.

SEVENTH JUDICIAL CIRCUIT—JOSEPH SMITH, JUDGE.

Counties.	Commencement of Terms.
Jackson	Third Monday in March and third Monday in September.
Kanawha	Second Monday in May and first Monday in November.
Mason	First Monday in April and first Monday in October.
Putnam	Third Monday in April and third Monday in October.
Roane	First Monday in March and first Monday in September.

EIGHTH JUDICIAL CIRCUIT—HOMER A. HOLT, JUDGE.

Counties.	Commencement of Terms.
Braxton	Eighteenth day of March and eighteenth day of August.
Clay	Twelfth day of March and twelfth day of August.
Fayette	Twenty-eighth day of March and twenty-eighth day of August.
Greenbrier	Twenty-fifth day of May and twenty-fifth day of October.
Nicholas	Fourth day of March and fourth day of August.
Pocahontas	First day of May and first day of October.
Monroe	Tenth day of May and tenth day of October.
Summers	Eighth day of April and eighth day of September.

NINTH JUDICIAL CIRCUIT—EVERMONT WARD, JUDGE.

Counties.	Commencement of Terms.
Boone	Twenty-eighth day of March and twenty-eighth day of September.
Cabell	Twenty-fourth day of May and first day of December.
Lincoln	First day March and first day of September,
Logan	Twentieth day of March and twentieth day of September.
Mercer	Twenty-ninth day of April and fifteenth day of October.
McDowell	Tenth day of May and twenty-sixth day of October.
Raleigh	Twentieth day of April and sixth day of October.
Wayne	Second Monday in March and second Monday in September.
Wyoming	Sixteenth day of May and first day of November.

